

COUNCIL MEETING

JULY 25, 2012

The Council Meeting of the Council of the County of Kaua'i was called to order by the Council Chair at the Council Chambers, 4396 Rice Street, Room 201, Lihu'e, Kaua'i, on Wednesday, July 25, 2012 at 9:35 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum
Honorable Dickie Chang
Honorable KipuKai Kuali'i
Honorable Nadine K. Nakamura
Honorable Mel Rapozo
Honorable JoAnn A. Yukimura
Honorable Jay Furfaro

APPROVAL OF AGENDA.

Mr. Chang moved for approval of the agenda as circulated, seconded by Ms. Yukimura, and unanimously carried.

MINUTES of the following meetings of the Council:

Minutes of the June 27, 2012 Council Meeting.

Mr. Bynum moved to approve the Minutes as circulated, seconded by Mr. Chang, and unanimously carried.

CONSENT CALENDAR:

C 2012-219 Communication (06/28/2012) from the Mayor, transmitting for Council confirmation, Mayoral appointee Jo Ann Shimamoto to the Salary Commission, replacing Mr. William Dahle, and whose partial term ends 12/31/2012: Mr. Bynum moved to receive C 2012-219 for the record, seconded by Mr. Chang, and unanimously carried.

C 2012-220 Communication (06/22/2012) from the Chief, Engineering Division, transmitting for Council consideration, a traffic Resolution establishing a 10 mph speed limit for Wa'a Road, Lihu'e District: Mr. Bynum moved to receive C 2012-220 for the record, seconded by Mr. Chang, and unanimously carried.

C 2012-221 Communication (07/18/2012) from the Director of Finance, transmitting for Council consideration, amendments to the FY 2012-2013 Operating and CIP Budgets to balance the General Fund CIP, Highway Fund CIP, and Sewer Fund CIP Accounts, including other "housekeeping measures": Mr. Bynum moved to receive C 2012-221 for the record, seconded by Mr. Chang, and unanimously carried.

COMMUNICATIONS:

C 2012-222 Communication (04/26/2012) from Council Chair Furfaro, requesting the presence of the County Engineer and the Chief of Buildings to provide an update on the repair and maintenance of the Kilauea Gym as it relates

to the leaking roof, floor damage, and corrective action that has occurred to address the roof and floor: Mr. Bynum moved to receive C 2012-222 for the record, seconded by Mr. Chang.

There being no objections, the rules were suspended.

LENNY RAPOZO, Director of Parks & Recreation: The update for... really much has not happened in terms of progress in terms of doing the lean-to and doors that we have talked about because during the last budget session or last budget exercises that we did, my intention was to use the 209 fund or the Parks... some of that money to fund this thing. We were going to allocate a hundred and twenty thousand dollars (\$120,000.00) to do the study to hire the roofing consultant and make those improvements. The drawings are done for the lean-to, but in doing the budget, we needed to sure up and make sure we had the appropriate funds to encompass everything that we were going to do from the 209 fund. Now that the budget exercise was done, we know what we are able to spend from the 209 fund. When we were clear with Finance in terms of what our direction is going to be with the money in that account, we will be moving forward, we will be transmitting over to Public Works our plans in hope that they will be able to do the work for us. They will be reviewing the plans and telling us "yes" or "no."

DOUG HAIGH, Chief of Building Division: We are waiting. We have not seen the plans and so once we receive those plans, we will be reviewing them and we are hoping to obtain, we hope we can do it in tandem with the roofing consultant so that we can make sure the plans are following the appropriate design with hoping to get feedback from the roofing consultant to assure that the designs are the best that they can be so that we do not continue with additional problems.

Chair Furfaro: So, we are nowhere? We have not done anything to the side doors, we are waiting for the roofing consultant before we address the eave being extended over the side exhibit doors? Is that what we are waiting for?

Mr. L. Rapozo: Parks is giving Building the plans to see if they can do the work for us. They want to ensure that over the doors, the eave as it was designed was done properly and that is what they will review. They will give us "yes" or "no."

Chair Furfaro: Do they have those plans yet?

Mr. L. Rapozo: Those plans are over...

Chair Furfaro: For the eave over the doors, the exhibit doors?

Mr. L. Rapozo: I do not know... the plans went over from Parks, yes.

Chair Furfaro: Okay. Doug, "yes" or "no," are we going to do the exhibit doors before we wait for the roof consultant?

Mr. Haigh: We have not reviewed the plans in detail, we are concerned that the details are done correctly. We are especially concerned about the flashing detail between the walls and the eave and we want to make sure those are correct. If it seems to be a simple detail without any issues, we can probably proceed, if not, we certainly want to get professional consultation to assure that we do it in the proper manner.

Chair Furfaro: Let me restate the question and just a "yes" or "no" will do.

Mr. Haigh: Okay.

Chair Furfaro: Are we not going to do the exhibit doors until we get feedback on the roof, "yes" or "no?"

Mr. Haigh: That is not my decision. I am sure the County Engineer is going to want to participate in.

Mr. Rapozo: Did you get the plans?

Mr. Haigh: I have not received the plans.

Mr. Rapozo: Parks said they sent it to you and you said you have not... where are the plans?

Mr. L. Rapozo: Chair, I will check to see exactly where those plans are. They should have been delivered.

Mr. Rapozo: When did it get sent over and what is the normal chain? When you send it out, where does it have to go?

Mr. L. Rapozo: Monday during our Division meeting...

Mr. Rapozo: This Monday?

Mr. L. Rapozo: I asked them to transmit the plans. I cannot see it going from one (1) office to the other office.

Mr. Rapozo: Monday, then that is reasonable because today is only Wednesday but I was not sure when the plans were sent over. If it was sent over Monday then Doug, you should be getting it, I would hope this week. And then from when you review the plans, you say it is not your decision whether or not you move forward, whose decision will that be?

Mr. Haigh: I will make a recommendation and I do what my boss tells me to do and my boss is the County Engineer, my direct boss.

Mr. Rapozo: Okay. So, your recommendations will go to the County Engineer?

Mr. Haigh: That is correct.

Chair Furfaro: Doug, when do you think you will have something to share with us so we might as well defer this until we know when you have something to share with us?

Mr. Haigh: Hopefully within a couple of weeks. It is not something that will take me a long time to look at and confer with my staff on our...

Chair Furfaro: Four (4) weeks will be fair and reasonable?

Mr. Haigh: Definitely.

Mr. Bynum: The plans that were sent over were done by whom?

Mr. L. Rapozo: Our in-house architect, at the time Raphael.

Mr. Bynum: Okay.

Chair Furfaro: We should defer this, Doug, until you can tell us exactly where we are at.

Mr. Rapozo: I just wanted to get some clarification because Lenny, the last time you were here these eaves or the overhangs were going to be put on as a temporary measure and it could be permanent but it was really to protect further damage from going in.

Mr. L. Rapozo: Correct.

Mr. Rapozo: It really was not to rectify the leaking of the roof.

Mr. L. Rapozo: Correct. It was to address water coming into the doors; to minimize the water coming into the door.

Mr. Rapozo: And that is how I understood it to be, so that would make sense. If there are other issues related to the roof and leaking, I think it is a separate issue and that in fact this needs to be addressed as soon as possible to prevent further damage to the floor.

Mr. L. Rapozo: And including changing the doors out.

Mr. Rapozo: Right. Regardless what happen with the roof, those doors need to be changed anyway.

Mr. L. Rapozo: Exactly.

Mr. Rapozo: I just want to make sure we are trying to fix the problem today so that we do not have further damage and then we can address the roof to the consultant and that is how I understood it to be at the last time we were briefed.

Chair Furfaro: Gentlemen and members of the Committee, Doug, if I defer this until August 22, 2012, we will have provided you enough time to be able to resolve these questions?

Mr. L. Rapozo: Yes.

Mr. Haigh: Yes.

Chair Furfaro: Members, that will be my intention. I am going to ask for the deferral from someone after we take public comments. Anything else you can share with us at this time, Doug?

Mr. Haigh: No.

Chair Furfaro: We are going to try to respect the date we have agreed on for August 22. Lenny, you have anything to add?

Mr. L. Rapozo: No. Thank you very much.

Chair Furfaro: Gentlemen, thank you very much for being here today. I would like to take public comment.

GLENN MICKENS: Let us review a little bit of this situation. It has been ongoing for eighteen (18) years. Two (2) months ago, we heard Lenny Rapozo tell this Council that the Kilauea Gym roof is still leaking. It was replaced after Iniki in 1993 and replaced again in 2003. Doug Haigh said that this new roof would have a twenty (20) year lifespan and yet it is still leaking.

Mr. Rapozo then said, "the remedy is ultimately replacing the roof," and that Parks and Recreation has put a request for one hundred twenty thousand dollars (\$120,000.00) to hire a consultant to decide on a solution for the roof and fix the doors where on the East side of the gym the water is coming in and rotting the gym floor.

Let us carefully analyze what has happened here and find some semblance of common sense in addressing what needs to be done. First, we obviously know that both roofs that were installed were improperly done, whether it was the wrong material used or incompetent workmanship, it was faulty since the leaking has never stopped.

Jobs involving County funds require a performance or surety bond from the contractor. If the contractor fails to properly fulfill his contract then the bonding company steps in and fixes the problem. The fact that we have spent thousands of dollars in legal fees and not found out why the bonding company procedure was not followed is inexcusable.

There are several reasons why this mess has continued for so long but the major one is that we continue to hire people into positions not because of their qualifications for the job but for political reasons and thus problems like this will continue to happen. I applaud Tim Bynum for his making note of this particular problem. Certainly, unforeseen problems can arise under the best of circumstances and with capable people in charge. But when a problem like this is ongoing for eighteen (18) years then we obviously have the wrong people in charge.

Secondly, why are we asked to hire an outside consultant for one hundred twenty thousand dollars (\$120,000.00) to tell a contractor how to properly install a roof or fix a leaky door? There are many very competent contractors on Kaua'i who can do this work, will put up a performance bond guaranteeing their work, and do not have to hire a consultant to tell them what to do.

In conclusion, I believe it is the job of our Council to better monitor problems like this because we spend tax money on legal action or consultants for problems like these take years to resolve.

Now if this was just a one (1) or two (2) or three (3) or five (5) year problem, I can maybe understand this thing ongoing but for eighteen (18) years and we do not demand that somebody tell us what is really going on. Now we are deferring it again until August or something. It makes no sense. I am sure people in the public are asking the same exact questions, "why are we not getting proper answers from

whoever is in charge?" I do not know who is in charge of this thing. I heard Mel ask a couple of questions and it is the same thing. Jay, we sat here before you made mention the fact that a gentleman that broke a leg on that floor, you knew about it and he did not turn around and sue the County because of it because he was a good Samaritan, he did not want to shut down the gym. Again, they say that the gym was sweaty, it was not leaking and that was flimsy excuse. I hope something can be brought to the forefront and we find out what the action happens to be. Any questions, I will be happy to try and answer them.

Chair Furfaro: I would like to get some of your statements more accurate. First of all, in 1993, I think the research that I dug into recently indicated that the roof was accepted at a point in time where the warranties expired, therefore invalidated the bond. That is the first piece from the research that I have done eighteen (18) years ago looking into it. There does not seem to be ability for us to pursue that particular avenue for damages; I am sorry about it, but that is what I have looked into. The County Attorney's Office had been involved in verifying that and...

Mr. Mickens: So, the original roof only had a one (1) year guarantee?

Chair Furfaro: In the bond work that was assigned to it.

Mr. Mickens: Then...

Chair Furfaro: This is my time to share with you... and then there was a second approach to overlap the ceilings and correct some of the leaks that perhaps the wrong attachments being used and so forth, I have found that in the records. That has happened, that is done... there was a test with water on the roof and so forth. Recently, some of the issues deal with, not just the roof but also if the floor is sweating because there was water under it from the flashings from the exhibit doors, those things are probably generating why the Engineering Department would like to get an expert involved. I just wanted to say that. Until we can hear more specifically from what they looked at in the plans on August 22, it is the goal of this Council to get it fixed once and for all. It has been pretty unacceptable and as we go forward, we want to fix that. But that is the eighteen (18) year history, Glenn.

Mr. Mickens: I had a lady call me because she and her husband has been in the roofing business for thirty some years and she said "I just want to bring this to your attention that we have done many roofs and we do not understand what is going on." She said her husband sat there and watched when they were putting this roof on and I am not a roofer, so I do not know, she said they were putting nails in the wrong place.

Chair Furfaro: Have her call me, I will be glad to talk to her. Remember, Kilauea is my hometown so I have great concern for getting this fixed once and for all. I think we will have more information on the twenty-second (22). I also want to say that I have great faith in Larry Dill, his staff, Lenny and certainly Doug Haigh. These are pretty professional people and I would just like to lighten your last comment, let us give Larry and his people an opportunity to resolve this with Lenny.

Mr. Mickens: Larry is a new man on the block and I have no qualms, I am not blaming Larry in any size, shape, or form. I think he is going to be very efficient at doing the job.

Chair Furfaro: Then you agree, let us give them some time to try to resolve it. It is on his watch now.

There being no objections, the meeting was called back to order, and proceeded as follows:

Ms. Nakamura moved to defer C 2012-222 to the Council Meeting scheduled for August 22, 2012, seconded by Mr. Chang, and unanimously carried.

C 2012-223 Communication (07/06/2012) from the Director of Finance, transmitting for Council information, the Period 11 Financial Reports – Statement of Revenues as of May 31, 2012, for Fiscal Year 2012, pursuant to Section 21 of the Operating Budget Ordinance (B-2011-732), County of Kaua'i: Mr. Chang moved to receive C 2012-223 for the record, seconded by Mr. Kuali'i.

Chair Furfaro: For the members, I do plan to do my own evaluation of this financial and I will share it with you some later time. We have several members from the Finance Department traveling at this time, so I will have this come back after we have done a little evaluation.

The motion to receive C 2012-223 for the record was then put, and unanimously carried.

C 2012-224 Communication (07/02/2012) from the Housing Director, requesting Council approval to decline the County's option to repurchase Unit No. 58, Villas at Puali, located at 1984 Haleukana Street, Lihu'e, Hawai'i, 96766, and to grant the owner a waiver of the buyback and allow the market sale of the unit for a period of one-year: Mr. Bynum moved to approve C 2012-224, seconded by Ms. Yukimura, and unanimously carried.

C 2012-225 Communication (06/26/2012) from the Prosecuting Attorney, requesting Council approval to apply for, receive, and expend federal funds from the S.T.O.P. Violence Against Women Grant for the Domestic Violence Prosecution Unit (DVPU) in the amount of \$47,903.00, and to approve the indemnification of the State of Hawai'i, Department of the Attorney General. Funding received will be expended on salaries/wages and supplies for the DVPU for the term commencing July 1, 2013 to June 30, 2014: Mr. Chang moved to approve C 2012-225, seconded by Mr. Bynum.

Ms. Yukimura: I would like to ask that this item be put to the end of the agenda for discussion in the afternoon. I did ask for some information which we just received this morning and I would like to have the Prosecuting Office be here for some questions.

Chair Furfaro: I want to make sure that we are referring to the responses we got from Jamie?

Ms. Yukimura: Yes.

Chair Furfaro: About twelve (12) pages worth?

Ms. Yukimura: Yes.

Chair Furfaro: At 8:30 this morning?

Ms. Yukimura: Yes.

Chair Furfaro: That is what you are referring to?

Ms. Yukimura: Yes.

There being no objections, C 2012-255 was moved to the end of the agenda.

C 2012-226 Communication (07/02/2012) from the Executive on Aging, requesting Council approval to indemnify the Church of the Pacific for use of their hall to be used for the Better Choice, Better Health workshops, also known as the Chronic Disease Self Management Program: Mr. Chang moved to approve C 2012-226, seconded by Mr. Bynum.

Chair Furfaro: May I have the County Attorney up for this item?

There being no objections, the rules were suspended.

Amy, may I assume... may I ask, I do not want to assume anything... the Office of Aging, the Executive Director there, when we see this particular request on the Board to use a third party facility, do I assume that any liability exposure naming the County co-insured or anything of that nature has already been secured?

AMY ESAKI, First Deputy County Attorney: I believe the County will be using the facility.

Chair Furfaro: Yes.

Ms. Esaki: And therefore they have in the document a "Release and Hold Harmless Agreement" clause which has been reviewed by our Office.

Chair Furfaro: Are they requesting any insurance from us?

Ms. Esaki: I am sorry, I have not reviewed the document myself but it does say that we will "indemnify them," and as far as insurance coverage, it is not clearly stated in the... excuse me, it does say. We have to supply with them a proof of comprehensive and general liability insurance.

Chair Furfaro: Thank you. Any more questions of Amy? If not, thank you very much Amy.

There being no objections, the meeting was called back to order, and proceeded as follows:

The motion to approve C 2012-226 was then put, and unanimously carried.

LEGAL DOCUMENT:

C 2012-214 Communication (07/04/2012) from the Director of Finance, recommending Council approval of the following:

- License agreement for 3.491 acres of land in Puhi (Lot 1540, Līhu'e, Kaua'i, Hawai'i) to be used by the Kaua'i Philippine Cultural Center (KPCC), a 501-C-3 nonprofit, as the location of a community center to benefit and honor the history and cultures of the people of Kaua'i, and which license will assist the KPCC to leverage further future funding and grant assistance.

Mr. Rapozo: Mr. Chair, just to clarify the first item is to approve and the second one (1) is to receive, you just read the approval item but 227, is the one (1) to receive. Well, I am reading the Council agenda and it says, "recommending Council approval of the following," and 227 says, "Communication from Ian Jung, Deputy County Attorney, recommending that C 2012-214," oh, I see 214 be received?

Chair Furfaro: Is Ian Jung going to be present for this? I would like to take a recess right now and give him a call.

There being no objections, the Council recessed at 10:04 a.m.

The Council reconvened at 10:18 a.m., and proceeded as follows:

Chair Furfaro: We are very clear on the Legal Document 214 is an item for receipt and 227 is an item that we will exercise a vote on.

Ms. Nakamura moved to receive C 2012-214 for the record, seconded by Mr. Bynum, and unanimously carried.

C 2012-227 Communication (07/19/2012) from Ian Jung, Deputy County Attorney, recommending that C 2012-214, relating to a License Agreement for the Kaua'i Philippine Cultural Center, be received for the record, and that the following License Agreement be approved:

- License agreement for a term of 99 years with a net annual rental of One Dollar (\$1.00) for 3.491 acres of land in Puhi (Lot 1540, Līhu'e, Hawai'i) to be used by the Kaua'i Philippine Cultural Center (KPPC), a 501-C-3 nonprofit, as the location of a community center to benefit and honor the history and cultures of the people of Kaua'i, and which license will assist the KPCC to leverage further future funding and grant assistance.

Mr. Chang moved to approve C 2012-227, seconded by Mr. Bynum.

Chair Furfaro: Members, the items that were recently circulated to you, I had circulated early in the week from Mr. Jung.

There being no objections, the rules were suspended.

IAN JUNG, Deputy County Attorney: I apologize for not getting this to you earlier but what I just handed out is a fact sheet and it gives a project area description. The land classification for both the (inaudible) zone and County zoning, as well as a little bit of history of the property and identification of what the further approvals will be. If you want, I can go through that.

Chair Furfaro: Mr. Jung, before we get our wires crossed, you had responded to our questions earlier in the week.

Mr. Jung: That is correct.

Chair Furfaro: Okay. This is a new fact sheet.

Mr. Jung: Right. I guess we will call it supplement and there is an attached map. I know there has been request for maps, so I attached the map in color for you guys.

Chair Furfaro: Thank you.

Mr. Bynum: Thank you for the written response, I understood all of it. It all makes sense to me, so I am ready to proceed with this.

Mr. Jung: Sure and again I apologize for not being here at the last meeting.

Chair Furfaro: Apology is not necessary, we know you had a conflict, so not to worry.

Ms. Yukimura: Yes, I do appreciate the work on this document and the responses due to our questions. On number fourteen (14) of the license agreement that is before us today, does the financial documentation stated in item fourteen (14) include, I am not sure what they call it for non-profits, but profit/loss statements? I think there is a required CPA end of the year financial that all non-profits have to do that includes all of that?

Mr. Jung: We kept it broad for the Finance Director to determine what...

Ms. Yukimura: I know.

Mr. Jung: ...the appropriate documentation are but in terms of non-profits, they are required to keep their books open. There is specific forms that you can file should non-profit, you can actually go to the location and ask to request documents to be open to view. If they do not allow for that, then you can file a form with the IRS to do so. It is kind of like a request for information.

Ms. Yukimura: Okay but does that include things like the audit statement and I just want to know if that is included.

Mr. Jung: I would leave that up to the Finance...

Ms. Yukimura: No, listen... you are not answering my question. If the Finance Director wants that, is that included?

Mr. Jung: I certainly think he can argue that issue.

Ms. Yukimura: I would like to... my intention was that it would be clear that those documents – all those documents would be included so that he would not have to argue.

Mr. Jung: Right and I think in looking at just the general term of what the slices is, it is the general document that...

Ms. Yukimura: That is what I am concerned about, that it is just going to be the document that is required to be filed by the IRS. Now, if you are looking at how the... you need to have actual expenditure... you need to be able to see the books and that was always the intention because you cannot enforce an agreement without that. I just want to make sure that this wording gives the Finance Director and the County the power to have access to all those documents.

Mr. Jung: I would think it would give access to the Finance Director to look at those documents but if you want to be clearer, we can certainly look to amend this and specify every type of document.

Ms. Yukimura: Well you have to have just some language – all inclusive language that says “including but not limited to,” and what I am thinking of is what you need to know... what the County would need to just be able to enforce.

Mr. Jung: I certainly see your point but they are a 501(c)3 company so they are bound by their IRS tax status to be non-profit. So in terms of identifying...

Ms. Yukimura: It is not about their non-profit status, it is about how they are using the property and charging and so forth. I am not familiar with all of the filings required for a 501(c)3 but there is a different purpose in terms of being a 501(c)3 and enforcing a license agreement. Do you not agree?

Mr. Jung: I certainly see where you are going but if you want to be clear in the document, we certainly can go back and amend the document to reflect the necessary documents you see fit to be included. I do not know all the detail that goes into necessary audits and whatnot, so it is hard for me to comment on that. I would leave it to the Finance Director.

Chair Furfaro: Before you commit yourself to what you are leaving up to the... let us hear the whole Council.

Mr. Jung: Sure.

Chair Furfaro: Because it is very simple, an amendment that makes reference to a manual audit and it being available and so forth.

Ms. Nakamura: On item number fourteen (14) which I think Councilmember Yukimura is referring to where you talk about "the request of the Director of Finance, Licensee shall also make available for inspection financial documentation, including but not limited to all tax filings," maybe you can put "and annual financial reports."

Mr. Jung: Okay.

Ms. Nakamura: And that should cover... and then it goes on, "concerning the operation of the facility," that tax filings would include the (inaudible) that all non-profits are required to submit to the IRS but a lot of times that information is not detailed enough, so maybe the annual financial report of the non-profit would be the additional backup information. Specifically related to the operations of the facility because the non-profit may have other projects and activities that may not be related to that, I am not sure the scope or the mission. That is just a suggestion.

Chair Furfaro: Were you able to follow the comments dealing with the financial reporting because I would hope to get to an amendment today?

Mr. Jung: I think I understand where you are going in terms of specifying the exact language, I think maybe we can take a recess and identify the language and if you guys want to approve today with an amendment, that I go back and do exactly what the Council wants. Without bringing it back up again, we can do it that way if you would like. But I will leave it up to the body.

Chair Furfaro: We will probably take a recess for that purpose. Obviously as stated two (2) weeks ago, there is some urgency here because we need to have a document in place to secure the State funds. I will be judging how many questions we have, I will be planning on taking a recess so you can revisit the wording with the two (2) Councilwomen.

Mr. Jung: Sure.

Mr. Rapozo: We have other license agreements with other non-profits in the County, correct?

Mr. Jung: We do.

Mr. Rapozo: The Historical Society down below... have we ran into any problems that we know of... are we typically asking them to see how their financials? I think number fourteen (14) is sufficient because it covers it. It says including but not limited to. 990 – I agree with Councilmember Nakamura that it is typically broad and you really cannot tell and I do not have a problem with doing an amendment to add in financial... but again a financial statement may not be as detailed as I think. Financial statement is really profits, losses, and it is not itemized and I do not know if we need to go that detailed for this license but how do we handle the other non-profits that lease from the County?

Mr. Jung: This is the first that I have seen this particular request for the language. We did have in the YMCA license agreement that we can go in and inspect the premises but given Council's discussion in the last meeting, we wrote in that the Finance Director also has the ability to also inspect the financial books. I did include that phrase and I am glad you put it out, that it is included but not limited to... so it does give the Finance Director a bit of discretion in terms of what he is going to request. But if say they decide not to hand over a certain document then it could be an argument that they are in violation of license because they are not turning over something that the Finance Director wants.

Mr. Rapozo: That is where I look at it, if they say "no, we are not turning it over," then we can say "fine, we terminate the license and you are done." That is the way I read it but we want to be more specific, I will leave that up to you and your advice, it would not hurt to put it in.

Mr. Jung: Sure.

Mr. Rapozo: I was just curious about how we are handling all the others within the County.

Mr. Jung: We have the Kaua'i Historical Society, we also have the West Kaua'i Business Professional Association, as well as the Tech Center out at Waimea. I did not see any language to that effect in those areas.

Mr. Rapozo: Thank you.

Chair Furfaro: But I think what we are saying here to close this document we would like to have as suggested by Councilmember Nakamura a small amendment to that language especially as we referenced the document 990, as well as what would not be a profit and loss statement but a financial statement.

Mr. Kualifi: I think one (1) of the reasons for the financial accountability is that unlike any other lease that the County has, this lease is for ninety-nine (99) years, so that is a long time. I think what Vice Chair Yukimura was saying the last time was that even though we may have complete confidence with everybody involved with the project today, that is going to change significantly in fifty (50) years because most of us will not be here. I hope to be here. The question I had and you answered it about the ninety-nine (99) years and stating that it is a big investment – millions of dollars and that the construction of mason (inaudible) materials means that the structure will last for a long time. Would that not have been the same for the YMCA's lease and their lease was fifty (50) years and so is the ninety-nine (99) year lease necessary, that term, that length because of the State or Federal grants or funding that is being sought after?

Mr. Jung: In looking at the actual State grant has not been formulized yet. The action that was taken was House Bill 2012 was just the appropriations of that, they got to run the documents and they got to... it is like the grant agreement, I do not know if you guys remember for the acquisition for Black Pot where you had to actually do the grant agreement. There are necessary steps that you have to go through. I do not know whether or not there is going to be a requirement for a license term of more than fifty (50) years but from what I... in this particular negotiation between the Finance Director and the KPCC, they wanted the term of ninety-nine (99) years. That was their negotiation but the way I looked at it and I think Councilmember Yukimura may recall this for the shoreline setback ordinance, there is a life structure of buildings between seventy (70) to a hundred (100) years so there is that reference to seventy (70) to a hundred (100) years. We linked it back to that rationale. It was up to the Finance Director to identify the ninety-nine (99) year term in discussing that issue with KPCC.

Mr. Kualii'i: And as far as you can tell the Finance Director or Administration would not have objections to tightening up the language for that fiscal accountability as it is being talked about?

Mr. Jung: I do not think the Finance Director would have a problem with that because I think his discretion and what is "included but not limited to," he can interpret what it is. If you want to tighten it up with specific standards, I do not see a problem.

Mr. Kualii'i: The other thing is on this fact sheet that you handed out, it says that the total lot size is seven point one, three, three (7.133) acres.

Mr. Jung: Correct.

Mr. Kualii'i: And then the lease that we are talking about is the three point four, nine, one (3.491) acres, is that total lot seven point one, three, three (7.133) County property?

Mr. Jung: It is and the YMCA facilities is on the other side.

Mr. Kualii'i: Oh, okay. So that is already spoken for in that fifty (50) year lease with the YMCA?

Mr. Jung: Correct.

Mr. Kualii'i: So this is the remaining portion of that property. In the market value of the parcel, the appraised amount of one point four million, is that for the entire parcel or just the three point four, nine (3.49) acres?

Mr. Jung: The way I understood Real Property doing the appraisal was for that portion of lot 1540, so this particular lease or licensed area.

Mr. Kualii'i: Okay.

Chair Furfaro: I am going to take another recess so you can grasp the amendment that has been suggested by Councilmember Nakamura.

Ms. Yukimura: I have more questions. Item number twenty-two (22) in the license, I have asked you this before but was there a reason that you subdivided the use and occupancy obligations and in one (1) case you made the licensee responsible to ensure action by the sub-licensee but in the other part you did not. Because our main relationship is with the licensee, it seems to me that you need the support of the licensee with respect to sub-licensee. I am just wondering why you did not make the licensee obligated to make sure that the sub-licensee would follow the obligations of the license agreement.

Mr. Jung: That is a good question. I think we highlighted sections eleven (11) and twelve (12) solely for the liability purpose and ensuring that they have the adequate insurance coverage just to ensure the County will be held harmless and indemnified from any potential lawsuits or someone getting injured on that property, that is why we specifically identified section eleven (11) and twelve (12). The next sentence, "furthermore all other obligations of the licensee to the County entered into this license shall apply to any sub-license," we wanted to then specifically convert that you cannot treat people disparately under race, sex, national origin – we wanted to make sure there was no... because it is County property, we want to make sure that the sub-licensee would not discriminate under those provisions and be bound by the remainder of the term.

Ms. Yukimura: If there is a violation by the sub-licensee, would the County sue the sub-licensee and the licensee, or is the licensee going to just standby while the County deals with the sub-licensee?

Mr. Jung: I think the intent of that particular provision is that if the sub-licensee violates any terms of this particular document then we could have grounds for ramification of the entire license itself. The licensee then has an obligation to ensure that the sub-licensee follows the terms of the document and is required to do and (inaudible) is set for.

Ms. Yukimura: Okay. So you do not see any need to make the language like you do in the first part with respect to sections eleven (11) and twelve (12)?

Mr. Jung: I do not think so.

Ms. Yukimura: Alright.

Mr. Jung: I wanted to specifically highlight sections eleven (11) and twelve (12) just so we can avoid the liability concern.

Ms. Yukimura: Okay. This issue about being open and not violating the constitutional protections regarding sex, orientation, natural origin, age, race, color, religion, handicap, is it addressed anywhere else except section three (3)?

Mr. Jung: It will be if you look at 22(c) and it is not specifically identified in there but subject to grant requirements, because they will be getting a grant from the State under HRS 42 (inaudible) which is their grant provision of the codes, then they will have to abide by the State's requirements and section 42(f) requires or has an anti-discrimination statement in there as well.

Ms. Yukimura: 42(f) is of what?

Mr. Jung: Hawai'i Revised Statutes. And that is because... we did not identify it specifically in here because that grant was not created yet but when the State appropriates the money subject to HRS 42(f) then they will have to enter into the grant process.

Ms. Yukimura: And 42(f) or any other HRS does not address the hiring of staff or the use of volunteers or the delivery of client services?

Mr. Jung: Because they are a non-profit receiving State money through the Legislative grant – the Legislative appropriation which leads to the grant then they are going to be bound to specific provisions that they have to incorporate into the grant agreement that is stated in HRS 42(f) and one (1) of those is discrimination policy.

Ms. Yukimura: Right. Well I guess I am just asking why you are mentioning it here in three (3) if you are not mentioning it for others and what if they do not get the State grant but use other moneys instead?

Mr. Jung: We would still have for the County designation of County property that we have section three to protect us.

Ms. Yukimura: But section three (3) does not apply to use of the facility, it applies to hiring of staff, use of volunteers, and delivery of client services.

Mr. Jung: If you go back to and maybe if you look at... and you got to incorporate by reference here, what I did here is... if you look on page three (3) of the actual document, paragraph one (1).

Ms. Yukimura: What actual document?

Mr. Jung: The license agreement.

Ms. Yukimura: Okay.

Mr. Jung: It says, "the Kaua'i Philippine Cultural Center shall be operated as represented in the Articles of Incorporation of Kaua'i Philippine Cultural Center in Section four (4). Powers and purpose of its articles of incorporation dated "filed 02/15/2011". But if you look at the Articles of Incorporation – we linked it to that date so that they are held to that page, just so you know. There are four (4) provisions there and number three (3) is open and encourage in the... I think I sent to you this document?

Ms. Yukimura: You did.

Mr. Jung: It is paragraph three (3) open and encourage all ethnic groups and organizations uses of this facility.

Ms. Yukimura: Okay but that is not the explicit protection of constitutional rights for use of the facility and I wondered why you would not include that too if you are going to include it as far as hiring of staff and use of volunteers.

Mr. Jung: In terms of letting others use the property at a reasonable fee, they state in the Articles of Incorporation that they are not going to be bias against any particular ethnic group but if you are concerned about having some bias against a particular ethnic group, we could certainly write it in there.

Ms. Yukimura: I am not concerned that is why I am not worried about having a provision that states clearly what the constitution requires. I do recognize that the use of reasonable fees, that really does have to be worked out in the future, I do not expect that it is going to be administered by race or class or sexual orientation or anything like that, that is why it just seems like a normal boilerplate that we would put in County documents and why would we not?

Mr. Jung: It is inherent in the law that they cannot discriminate but for the use... for them hiring... to have an anti-discrimination clause that they hire, we want to protect that if the County gets the liability to the County alone but if there are practices, if they are going to discriminate when someone... if they choose to not let or let someone use the property for a fee and discriminate on that basis, they could be held to a constitutional basis against them too. I guess I am not following your question, our concern is who they hire so the people cannot come back that have gotten hired using County land to come back and say the County owns the land, these guys operate the facility, they hired them on a race class basis – discrimination basis, so they are going to come back and hit... that was the concern.

Ms. Yukimura: But violation of rights as to use of property is going to incur the same kind of liability on us too. If it is a constitutional violation, it will have the same kind of allegations against the County or right to collect against the County. It would create that same kind of liability?

Mr. Jung: Arguably but if we are going to start...

Ms. Yukimura: Arguably?

Mr. Jung: I think if we are going to start discussing liability then maybe we should reserve that for Executive Session because I do not want to...

Ms. Yukimura: Well the question is would a (inaudible) phrase about not violating use of the facility not violating constitutional protected rights, would that incur a liability on the... an extra liability on the County? Would the requirement not for the licensee actually be a protection for the County?

Mr. Jung: It would and I think we could argue that under paragraph three (3) that the delivery of client services would be the use of the facility and that could inherently protect the County. I guess I am not following your trail of thought in terms of where you want to protect the County outside client services.

Ms. Yukimura: Okay. I do not want to belabor this if nobody else has a concern, all I am asking is why do you explicitly talk about hiring of staff and use of volunteers when you do not talk about the use of the facility? But if your intention is delivery of client services and that is... I am not sure how you are interpreting that, if that is your intention that that means use of the facility then let it be said on the record.

Mr. Jung: I believe that is the intention of why we crafted the language that way, just because the delivery of the client services is the actual usage of the facility.

Ms. Yukimura: So then you are telling me that my concerns are covered?

Mr. Jung: Yes but it seems... I guess I am not following your frame of thinking.

Ms. Yukimura: I am sorry I am not clear, I thought it was just a broilerplate for a County or State to do that is all.

Mr. Jung: It would cover for the use of the facility but in terms of... well, I will leave it at that.

Ms. Yukimura: Okay, thank you. Now, my other question - are you able to speak about the skateboard park?

Mr. Jung: I did speak with Lenny Rapozo, our Parks Director and he is going to work within the Administration to identify a new location and as I stated in our responses and in talking to Lenny, they are looking at... and in just discussion, no formal plan or site plans or anything like that, we are looking at Nāwiliwili Park up by the War Memorial – Vidinha Stadium and possibly another location. They are looking at alternative sites but no formal plans have been identified and no specific plans have come up for this particular location, it has just been dialog regarding whether or not skate parks should be in this license site.

Ms. Yukimura: If you would just go back to the Administration, my understanding is that that was the identified site or at least the young people were told that and we just need to make good on our commitment to them. I am not saying that this should be... I see the Philippine Cultural Center is... this is the site for that but I would like to ask the Administration to move with all due speed for a skateboard park in Līhu'e for the young people.

Mr. Jung: Sure.

Ms. Yukimura: And some of the alternatives sound like they have possibility but we need to take it from possibility to some actual action.

Mr. Jung: Sure.

Ms. Yukimura: Thank you.

Chair Furfaro: I would also would like you to say to the Administration that in the near future, question number twelve (12) on this particular piece will be agenda as a Planning item in the future. So that we can have question number twelve (12)...

Ms. Yukimura: Question number twelve (12)?

Chair Furfaro: Question number twelve (12) was the question we sent over on the skateboard park and that will be on the agenda in a future meeting and you can share that with the Administration.

Mr. Jung:

Okay.

Mr. Kualii: I actually share some of the concerns Vice Chair was talking about because I have heard from some constituents and it is basically the idea of a public purpose and I am wondering if it is mentioned anywhere else other than in the point number one (1) on page three (3) where it basically says, "this license shall be designated for community and cultural use," and then at the end I see in 22(d) the very last page, page nine (9) it says, "licensee shall allow the general public the use of the facility," and then it talks about use by the County and then it says, "for the use of the County there will be a reasonable fee schedule." I am curious if this language means there could be a set of fees for the general public and then a different set of fees for the County. I am thinking the County is the general public, the citizens are the tax payers and this investment of one point four (1.4) million dollars and three point five (3.5) acres and ninety-nine (99) years is the biggest investment of its kind that this County has ever made to a non-profit. It is a good thing, I am going to support it wholeheartedly but I think we have to be responsible to the citizens to ensure that they really are going to have access to this place because they are paying for it. Does public purpose and the guarantee of public purpose show up anywhere else other than I just saw it? I have not gone through this word for word, I am not an attorney but that is what I see and tell me...

Mr. Jung: The community park and cultural area will be open to the public and I think the... according to the Articles of Incorporation and discussions that I sat in with members of KPCC, their intent is to create somewhat of a museum there in the hall which is going to be open to the public. The usage fee is for events or gatherings where people can come together and rent out the facility to hold an event or gathering whether it be a graduation party or something to the like. At that point, they are going to establish a reasonable schedule in terms of how they are going to associate the fees for that usage. It is hard to build into this document what that rate will be because they do not know the operational cost yet.

Mr. Kualii: But that what you just said, the part about the cultural park area and the museum, is that written in here and is that free to the public? Can they come in and learn about the Filipino culture and go into this cultural park area and go into this museum for free?

Mr. Jung: It is not written into the document yet because the site plan has not been developed yet. If you want to get someone up here...

Mr. Kualii: I am just saying that it is two (2) separate things?

Mr. Jung: It is two (2) separate things.

Mr. Kualii: Usage of the facility is renting out a room to have a meeting or a workshop or whatever, maybe a party, but the cultural park area and the museum, that would be for public purpose would be open to the public, anyone from the public for free?

Mr. Jung: That is how I understood it.

Mr. Kualii: Okay. That is good to hear and I just think that I am hearing it from you but I do not know if it is written in the document anywhere. Maybe there is an addendum narrative or something more and we will hear more from the organizers but that was my concern which I heard from people.

Mr. Jung: Sure.

Chair Furfaro: Vice Chair Yukimura, I am not going to recognize you now because you have got to speak twice already. Is there any other members that would like to speak first?

Mr. Rapozo: Ian, the only question I have as far as the setting of the fees, I remember some discussion recently on other issues where the fees for public uses must be set by the Council and I am asking our staff to try to look that up in the Charter. I cannot remember if that is a Charter provision or not but would this qualify or does this license provide the authority to setting the fees by KPCC?

Mr. Jung: That is an interesting question because I think we are in a public/private partnership situation...

Mr. Rapozo: Well I think because it is public land, I think we would be bound by the same provision as if it was a private building.

Mr. Jung: I would have to look that up. I do not know the answer.

Mr. Rapozo: We are looking it up now, I did not want to lose my opportunity to ask a question over here but we will also look it up but I believe that we may be required to approve the fee structure here and maybe if you can take a quick look at that on the recess, that would be appreciated.

Chair Furfaro: Any other questions before I go back to Councilmember Yukimura and I do want to point note on fees, they will require from their Board periodic reviews as cost, operational expenses, go up so the question is do we have the right to be setting a fee and then at what time of year would that suggested fee schedule be submitted going forward?

Ms. Nakamura: Just a follow up on Councilmember Kualii's discussion about the fees. Is there in here any discussion how do you define a reasonable fee?

Mr. Jung: The reasonable is a legal standard and to keep the... without getting into the nuts and bolts of details in this simple use (inaudible) document, we do not want to start... I would hate to use the word clutter but I hate cluttering the document with specifics that can be worked out especially because of the duration of the license. Because it is ninety-nine (99) years, it is hard to identify what cost would be in the future in terms of electricity and whatnot.

Ms. Nakamura: We are not going to know what the reasonable fee until more detailed business plans are or development plans, operating plans, and business plans are done which would be probably several years out. So it is premature – this language is a general so that it gets us to the next – that moves us along because at some point in time someone is going to have to make a determination of what is reasonable.

Mr. Jung: Yes.

Ms. Nakamura: And I guess the question is at that time who takes the lead on determining that?

Mr. Jung: I am going to have to go back and take a look at this because the YMCA sets a fee for the use of their facility and I am not sure if Council set that fee.

Ms. Yukimura: No, we do not.

Ms. Nakamura: Thank you for your responses to the questions, I know my questions got answered and incorporated into this.

Mr. Bynum: (inaudible) I was thinking about them when you described because they have a museum, public use, they set fees and I do not know who owns the land... I am just curious.

Mr. Jung: I have been told the Vet Center they actually own their land, so their fees are quite expensive from what I heard.

Ms. Yukimura: You need to research this but I think a fact of a license and I hope that the fact of a license is a separation that does not require the County Council to set fees. That is what we are trying to get it through a public/private partnership. I am also thinking that it might be reasonable to set fees for a museum entrance because you are going to have to upkeep the museum. I do not know that open to the public means no fees but it does mean something about easily accessible or affordable to the general public and I do think that the Kaua'i Philippine Cultural Center Board is really trying to be responsible and think about how they are going to have a sustainable facility there and that is why they are doing a feasibility study and they will be more understanding of how fees will be set and what kinds of issues will come up after they do that feasibility study. It is right not to unduly constrict that process but to set some bottom lines about affordability because we are putting public resources, land and State money into it and because it is so long term and the good hearted people of integrity will not be around in fifty (50) years necessarily and so how we are going to keep some checks and balances on track.

There being no objections, the meeting was called back to order, and proceeded as follows:

Chair Furfaro: Members, I would like to point out earlier in our discussion, it was Councilmember Yukimura's suggestion that we enter some commentary on financial reporting and then it was Councilmember Nakamura who had made some offer on the verbiage that could be used for that. My intent right now would be to allow a ten (10) minute recess so that the two (2) Councilmembers can consult with the County Attorney on that verbiage and offer an amendment that we can put on when we come back from recess.

There being no objections, the Council recessed at 10:59 a.m.

The Council reconvened at 11:12 a.m., and proceeded as follows:

Chair Furfaro: I am going to make some assumptions here. The fact that the County Attorney is working on the modified financial reporting, we are going onto the next item for now which is the item dealing with the Prosecutor's Office and their application for the grant.

C 2012-225 Communication (06/26/2012) from the Prosecuting Attorney, requesting Council approval to apply for, receive, and expend federal funds from the S.T.O.P. Violence Against Women Grant for the Domestic Violence Prosecution Unit (DVPU) in the amount of \$47,903.00, and to approve the indemnification of the State of Hawai'i, Department of the Attorney General. Funding received will be expended on salaries/wages and supplies for the DVPU for the term commencing July 1, 2013 to June 30, 2014: Mr. Rapozo moved to approve C 2012-225, seconded by Ms. Nakamura.

There being no objections, the rules were suspended.

Chair Furfaro: The questions that were surfaced by Vice Chair Yukimura were not presented because we waited for opportunity to have you here.

Ms. Yukimura: Thank you so much for being here and for the information that you provided. This is a Domestic Violence Prosecution Program which is very important to all of us and we are pleased to see the Prosecuting Attorney's Office pursuing grants like this. This grant will be primarily as I read it for an Attorney position for a one (1) year period? And it was interesting to see your performance measures which you will be tracking the number of Domestic Violence cases and protective order violations received from KPD and you have given some of the history of that and then you will be also measuring number percentage of domestic violence cases and protective order violation screened and charged or declined within of thirty (30) days of receipt and then the number of domestic violence cases and protective order violations that are vertically prosecuted and number and percentage of domestic violence and protective order violations resulting in convictions. I was interested in past grant and performance and I had asked for that information and you have responded that the 2009 request is yet to be expended... no, actually the report is not complete for 2009.

JAMIE CHONG, Grant Coordinator: The 2009 moneys have just been – the grant has just expired on July 30 so it takes thirty (30) days for us to do the report, so we have not done the report yet.

Ms. Yukimura: Okay. My confusion is if I am looking at the right one...

Ms. Chong: The fiscal years do not match the years that the grants are going through the process. Like this application is for fiscal year eleven (11) moneys. They do not match up. I believe at the AG's Office, the grants run for four (4) periods – four (4) years and so it just depends on when we expend the funds and how quickly we expend the funds that the new grant starts, so the fiscal years do not match up.

Ms. Yukimura: So this 2009 grant which is the first grant you gave us a copy, it says, "project period is September 2010 to February 2011..."

Ms. Chong: Those are the intended dates. The applications are due on a certain time so we have to kind of coincide when the application is due to when the project is expected to take place. It does not necessarily mean that the project starts on that date. Sometimes we have no cost extensions from previous grants if all the funds have not been expended, so it just goes consecutively but not necessarily matching the dates that the application is intended.

Ms. Yukimura: Okay, so what were the dates of expenditure for this grant that says project period 2010 to February 2011?

Ms. Chong: You have to match that with the project. I would have to go back and check with it. I did provide stats for the years that you requested which was 2010 and 2011. I did not do the conviction rates but I do have the conviction rates here for 2011.

Your question one (1) was for years 2010 and 2011, what is the number of domestic violence cases and protective order violations that are vertically prosecuted? For fiscal year 2010, there were two hundred twenty-seven (227) DV cases that were vertically prosecuted and thirty-nine (39) TRO cases that were vertically prosecuted.

Ms. Yukimura: When you say, "fiscal year 2010," you mean January 2010?

Ms. Chong: Right, I am sorry, calendar year.

Ms. Yukimura: And this is the... but this does not correlate to the expenditure year?

Ms. Chong: No. Sometime grants start September 15th and then they will end April 30th. Because of the amount of money, sometimes it does not necessarily go throughout the whole year. These are formula grants and for STOP VAWA grants we get about between forty-five (45) and forty-seven thousand dollars (\$47,000.00). So it does not necessarily take us throughout the whole year and it depends on the types of cases that the Attorneys have. The amount that we have is not enough to cover the whole year salary for our attorneys and we also do have the attorneys doing other work. For this particular grant that is up right now for approval, the salary for the Special Prosecuting Attorney is at a 0.6fte which means that the Prosecutor will spend sixty percent (60%) of the time doing DV cases and TRO cases and the other percentage of the time doing other cases as assigned by the Prosecutor.

Ms. Yukimura: But it is still a year's period but he works sixty percent (60%).

Ms. Chong: Right and it just depends, it fluctuates, it depends how much work comes in for that Prosecutor to do... we might do a budget adjustment, it might change, they might have to increase it therefore the grant period would shorten and we would then submit budget modification to the AG's Office requesting that the grant period be shortened. And the increase... and the salary that is covered by the grant will increase, so it just depends on what is coming in and the work that the Prosecutor is doing at the time.

Ms. Yukimura: The statistics you shown us is 2010....

Ms. Chong: Calendar year.

Ms. Yukimura: Yes. Well how many cases were received in 2010? Three hundred and six (306), is that right?

Ms. Chong: Yes. Those are the amount of reports that were received.

Ms. Yukimura: Okay, and the amount of...

Ms. Chong: Of cases that were...

Ms. Yukimura: ...screened, charged, or declined within thirty (30) days was two hundred and two (202)? It is in your application.

Ms. Chong: Yes.

Ms. Yukimura: So, for us it is (c)2012-225 page three (3). Is it not two hundred and two (202)?

Ms. Chong: Yes.

Ms. Yukimura: And then the vertically prosecuted, you just gave us was two hundred twenty-seven (227)?

Ms. Chong: Right, the reports that were submitted.

Ms. Yukimura: And the conviction rate was...

Ms. Chong: For 2010, it was ninety-eight percent (98%).

Ms. Yukimura: Okay, is that of the percentage that went to trial?

Ms. Chong: Yes. The case is closed.

Ms. Yukimura: The percentage that went to trial?

JAKE DELAPLANE, First Deputy Prosecuting Attorney: No, it is not the cases that actually went to trial. It is the cases that we... those cases that are in the conviction rates, all of them do not necessarily go to trial. We do keep track of the number that goes to trial and the dispositions of each but they do include people that plead guilty or plead no contest to charges.

Ms. Yukimura: Okay. Can you follow up and I do not think it will stop the approval of the grant today but I just... how many plead guilty, how many no contest, and then how many went to trial?

Mr. Delaplane: Yes.

Ms. Yukimura: For 2011.

Ms. Chong: I have it here. For 2011, the conviction rate for domestic violence cases.

Ms. Yukimura: Wait, start with the number received. I have three, three, and two (332). Is that right?

Ms. Chong: The number of reports received, yes.

Ms. Yukimura: And the number that were screened charged or declined within thirty (30) days was a hundred and three (103)?

Ms. Chong: Yes.

Ms. Yukimura: And then you have the vertical prosecuted?

Ms. Chong: The amount that was prosecuted, right. And then the conviction for 2011 for domestic violence cases it was ninety-nine point one, seven percent (99.17%) or a hundred twenty (120) out of a hundred twenty-one (121) cases. For the protective orders, it was ninety-five point eight, three percent (95.83%) or twenty-three (23) out of the twenty-four (24) cases were conviction.

Ms. Yukimura: And this is your 2011 statistics?

Ms. Chong: Yes.

Ms. Yukimura: And you are reading from something that we do not have, right?

Ms. Chong: Yes, I am sorry.

Ms. Yukimura: Can you submit that?

Ms. Chong: Yes.

Ms. Yukimura: And then 2012, we are still in the middle of it.

Ms. Chong: Yes.

Ms. Yukimura: As a follow up, can you breakdown that years down to plead guilty and no contest, and trial? And in the trial information, how many convictions and I do not know what other alternatives there are but you guys know that. You are setting some high goals for turnaround then, right? Which I love aiming high, we just talked with the Kōloa School Principle about aiming high and your goal is... what is your goal? So, you have goals and objectives... so your goal is to screen ninety-five percent (95%) of all domestic violence cases including protective order violations within thirty (30) days of receipt. Okay, good that you have that goal. Just so I am clear, you say that the project period is from July 1, 2013 to June 30, 2014, but you will get word of this money and the money will be awarded to you when?

Ms. Chong: This is a formula grant so the moneys are actually already available. However, we have not expended the fiscal year 2010 STOP VAWA grant.

Ms. Yukimura: But you could use it for... that is interesting... you could use it for this year if you want to?

Ms. Chong: Well, not while we already have... not while we are in current contract right now.

Ms. Yukimura: Yes, you have to use up the money you have first.

Ms. Chong: Right. So as soon as we use up that money then this grant will be able to start.

Ms. Yukimura: Can you use the money for other things in domestic violence prosecution which may be bottlenecks? And I do not know what the bottlenecks might be? Well actually, what your bottleneck looks like to be is turning cases around within thirty (30) days.

Mr. Delaplane: That is actually is not the bottleneck that we are reading, I think you are referring to the discrepancy between the number of case, these reports received and then the number that is screened and charged.

Ms. Yukimura: Right.

Mr. Delaplane: There is also an additional number that is included in that calculation which are cases that are declined prosecution, so that statistic of screened and charged means cases that we actually brought forward to charges. We have monthly meetings with each of our units with the domestic violence unit and all the other units that we operate in our office and we make sure our screen is up to date. In most of our units, we are up to date especially in the domestic violence unit because those cases are so volatile and they are so important, we are almost always meeting our goals as far as meeting that thirty (30) day standard turnaround once we get the screening.

Ms. Yukimura: That is excellent. What we need is the cases declined then?

Mr. Delaplane: Yes and we can provide that. That is actually in the sheet that we have today, so we can provide that to you.

Ms. Yukimura: Okay, very good. I would just like to show what I tried to figure out and I am sure I... so, I was using the grant periods and I found eight (8) months gaps because we have three (3) grant applications, the September 10 – the one at the top is the 2009, I think. This is the 2010 grant and this is the 2012 grant.

Ms. Chong: There was... this grant was a little complicated, we had ARRA funds that was also granted to us and what happened to us was we kind of stopped mid-process because we had to expend the ARRA funds first. We started out with one (1) regular STOP violence grant. When the AG's Office realized that we were awarded ARRA funds that we needed to expend, we stopped that regular STOP VAWA grant, started on the ARRA funds so that we were able to expend it within the time period that they had, and then we went back and used the rest of the funding that we had from the previous grants. So it was a chopped up period.

Ms. Yukimura: And that ARRA grant for the public's understanding was the stimulus moneys that came from the President, the Federal Government to create jobs and they had pretty vigorous deadlines and so it made sense that you use those moneys first.

Ms. Chong: Yes.

Ms. Yukimura: Thank you. I think I have... I think we all have a clear picture of the grant process on domestic violence. I do not have any problem with approving it but I would like to get the follow up statistics especially if they show you looking better than ever.

Chair Furfaro: We will get some finalized questions over to you, Jake.

Mr. Bynum: These are grants that you had for some time, correct?

Ms. Chong: Yes.

Mr. Bynum: There is no substantive changes in this grant year in terms of scope of services, you are going to keep doing the things that you have been doing?

Ms. Chong: Right.

Mr. Bynum: That is all.

Ms. Yukimura: Thank you.

Chair Furfaro: Jake, these are seventy-five (75) / twenty-five (25) match grants?

Ms. Chong: Yes, the STOP VAWA grants, yes.

Chair Furfaro: Thank you.

Mr. Kualii: It appears that your Department is actually doing a pretty good job at identifying grants and taking... helping fund operations with grants in addition to County funds and taxpayer moneys, do you have any sense of what percentage of your total operations is being paid for by grants – different grants like this? It would be interesting to know. You can go and find out.

Mr. Delaplane: Over the past two (2) years it has been a steady decline.

Mr. Kualii: It is declining?

Mr. Delaplane: Yes. During last year budget presentation, I think I had a graph and I can actually give that to you and it would be current as of last year and I think we can add in what we had this year but it is kind of slim pickings out there for grants and it is... there were quite a few grant moneys available for law enforcement probably over the past decade but we have seen a slow decline in that. We are having to be more creative and really look hard for the opportunities and Jamie does a great job doing that for us. Whatever grant moneys are out there, whatever ways that we can find to screen our operations and become more efficient and serve the public better, we are out there trying to do it.

Chair Furfaro: Any other questions?

Mr. Rapozo: Jamie, how long has the OPA been beneficiaries or recipients of the STOP Violence grant?

Ms. Chong: I think it goes back the 1990's.

Mr. Rapozo: Right, so this is the same grant that we receive every year?

Ms. Chong: Yes. Formula grants, so every year...

Mr. Rapozo: Well, one of them.

Ms. Chong: Right, one of them.

Mr. Rapozo: I just wanted to simplify for the viewing public because it could be construed as a complicated grant but really what this grant does is it pays for sixty percent (60%) of an Attorney's salary to work on domestic violence cases/TRO cases?

Ms. Chong: Yes.

Mr. Rapozo: And these Attorneys, whoever that Attorney may be, their salaries – their position is really subject to the approval of this grant.

Ms. Chong: Yes.

Mr. Rapozo: Because we do not have the County funding to pay for that sixty percent (60%) should we not approve that grant. In essence, we are... what this grant does, it allows the OPA to continue staffing that Attorney so that that Attorney can work and at least for sixty percent (60%) of the time on domestic violence cases and TRO cases.

Ms. Chong: Yes.

Mr. Rapozo: Now, that does not prevent this Attorney from working on domestic violence and TRO cases a hundred percent (100%) of his or her time, it is just the funding from this grant requires a sixty percent (60%) function with that Division, if you will.

Ms. Chong: Yes.

Chair Furfaro: Jamie, thank you very much for all of your very specific work that you have done and reporting.

Ms. Yukimura: If you get these moneys and the case load goes above the sixty percent (60%) time then you can use these moneys that are available right to fund that?

Ms. Chong: Right, I would do a budget modification and probably lessen the amount of time.

Ms. Yukimura: So, it is great that you have this buffer of kind of future moneys in case you exceed it right now because of whatever...

Ms. Chong: Right. You can always start it sooner.

Ms. Yukimura: Excellent, thank you.

Chair Furfaro: Thank you for that explanation, Jamie. I am going to go ahead and excuse both of you. Thank you for coming over.

There being no objections, the meeting was called back to order, and proceeded as follows:

The motion to approve C 2012-225 was then put, and unanimously carried.

COMMITTEE REPORTS:

PLANNING COMMITTEE REPORT:

A report (No. CR-PL 2012-04) submitted by the Planning Committee, recommending that the following be received for the record:

“PL 2012-01 Communication (06/29/2012) from Committee Chair Nakamura, requesting the presence of the Planning Director to provide an overview on the Planning Department’s FY 2009-10 to 2014-2015 Capital Improvement Program Report (6-year CIP), including, but not limited to, the process for implementation and management of the Planning Department’s CIP Projects,”

Mr. Bynum moved for approval of the report, seconded by Mr. Kuali’i, and unanimously carried.

HOUSING/TRANSPORTATION/ENERGY CONSERVATION & EFFICIENCY COMMITTEE REPORT:

A report (No. HTE 2012-09) submitted by the Housing / Transportation / Energy Conservation & Efficiency Committee, recommending that the following be received for the record:

“HTE 2012-12 Communication (06/26/2012) from Committee Chair Yukimura, requesting agenda time to provide a presentation from the 11th Annual New Partners for Smart Growth Conference, held on February 2-4, 2012 in San Diego, California, regarding progressive trends in State transportation policy,”

Mr. Kuali’i moved for approval of the report, seconded by Ms. Yukimura, and unanimously carried.

PUBLIC SAFETY & ENVIRONMENTAL SERVICES COMMITTEE REPORT:

A report (No. PSE 2012-06) submitted by the Public Safety & Environmental Services Committee, recommending that the following be received for the record:

“PSE 2012-04 Communication (05/25/2012) from Committee Chair Rapozo, requesting the presence of the Civil Defense Manager to provide a further update on the County’s response to the recent storm and flooding on Kaua’i and the federal declaration of April 18, 2012,”

Mr. Kuali’i moved for approval of the report, seconded by Ms. Yukimura, and unanimously carried.

RESOLUTIONS:

Resolution No. 2012-49, RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE SALARY COMMISSION (*Jo Ann Shimamoto*): Mr. Bynum moved to adopt Resolution No. 2012-49, seconded by Ms. Yukimura.

Mr. Chang: I just wanted to say thank you to Jo Ann for stepping up as a volunteer after her retirement, just another example of community members wanting to be involved as a volunteer. I just want to say aloha to Jo Ann.

The motion to adopt Resolution No. 2012-49, was then put, and carried by the following vote:

FOR ADOPTION: Bynum, Chang, Kualī'i, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST ADOPTION: None	TOTAL – 0,
EXCUSED & NOT VOTING: None	TOTAL – 0,
RECUSED & NOT VOTING: None	TOTAL – 0.

Resolution No. 2012-50, RESOLUTION ESTABLISHING 10 MPH SPEED LIMIT FOR WA'A ROAD, LIHU'E DISTRICT, COUNTY OF KAUAI: Mr. Kualī'i moved to adopt Resolution No. 2012-50, seconded by Ms. Yukimura.

Ms. Yukimura: I have a floor amendment which has been circulated because the map that is attached shows fifteen (15) miles an hour even though the wording in the Resolution says ten (10).

Ms. Yukimura moved to amend Resolution No. 2012-50 as circulated, as shown in the Floor Amendment which is attached hereto as Attachment 1, seconded by Mr. Bynum.

Chair Furfaro: Just for some clarification to the Clerk, this map that first came over to us came from the Highways Roads Division? Could you make sure they realize that they sent us a map that does not jive with the Resolution? And also put in there in the future that is unacceptable.

The motion to amend Resolution No. 2012-50 was then put, and unanimously carried.

The motion to adopt Resolution No. 2012-50 as amended was then put, and carried by the following vote:

FOR ADOPTION: Bynum, Chang, Kualī'i, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST ADOPTION: None	TOTAL – 0,
EXCUSED & NOT VOTING: None	TOTAL – 0,
RECUSED & NOT VOTING: None	TOTAL – 0.

There being no objections, the Council recessed at 11:39 a.m.

The Council reconvened at 11:45 a.m., and proceeded as follows:

Chair Furfaro: You have an amendment to the license to share with us.

Mr. Jung: Again, good morning Council Chair, members of the Council. After meeting with Councilmember Yukimura and Nakamura, we looked

at doing a total of four (4) amendments on pages three (3), six (6), and eight (8) respectively. I will walk you through them. I did do it in ramseyer format with highlights for easy readability, but just for the purpose of this amendment, if the document is executed, we are going to get rid of the ramseyer. If you look on page three (3) at the top there, there is another typo of which my English teacher at Kapa'a would kill me for. We got rid of the word "the," and then in paragraph three (3) we incorporated some of Councilmember Yukimura's concern regarding the use of the facility so we just added a fourth clause there saying – getting rid of "or delivery" and then we have "delivery of client services, or use of the facility." We attempt to cover all of our basis there.

Mr. Chang:

Ian, can you repeat that again?

Mr. Jung: On page three (3), the first amendment is in paragraph one (1) on the top line of on page three (3). We are eliminating the word "the" on the top there and then on page three (3) we are eliminating "or after volunteers," and we are adding a comma after services to include language "or use of the facility." On page six (6) in paragraph fourteen (14) in the last sentence there where it says, "including but not limited to all tax filings" and the new language reads "and annual financial reports, concerning the operation of the facility." And on page eight (8) under paragraph twenty-two (22) (b) public usage, Councilmember Rapozo did pick out another typo for us and that is subject to reasonable hours. I would like to thank the staff for helping me get this out so quickly.

Chair Furfaro: They are pretty good over here, thank you for recognizing that. Questions for Mr. Jung? Mr. Jung, I think we are good. May I ask the members of the Board of Directors of the organization, do they have copies?

Mr. Jung:

I did pass it out to the Board.

Chair Furfaro: Based on those amendments, I would like to see if I can get that approved first and then I will call up for testimony.

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Rapozo moved to amend C 2012-227 as circulated, as shown in the Floor Amendment which is attached hereto as Attachment 2, seconded by Mr. Chang, and unanimously carried.

Mr. Bynum: I appreciate the patience to do due diligence and to be able to make these changes today, thank you, Mr. Jung and the County Attorney's Office. I just want to really thank the Kaua'i Philippine Cultural Center leadership for putting this together. As I said at the beginning of this, there has been efforts to do similar things on Kaua'i a number of times in the past. I have been on Committees where we explored things and it did not happen and I believe that this is the right group with the commitment and expertise to pull it off. It has happened quicker than I expected so I want to compliment you. In terms of the earlier discussion, I understand the intention, I also understand that I read somewhere in all of these documents the intention to use block build that has a building life that extends the building life above what the sixty, seventy years of wood construction is put at and so the term of the lease seems appropriate and I just think that this is kind of a momentous movement and I wish you all the best of luck going forward.

Mr. Chang: From the very beginning, the Filipino community took the lead and took charge of "let us go for it." But right from the very beginning, the logo or the cry to the community was that it is a place for all. Mr. Bulatao was here with a shirt, he turned around and wanted to make sure everybody saw that it was a place for all, that is what the logo says. I want to just say to the community that everybody is welcome regardless of race, color, what have you and so that is a given. Number two (2), I just want to say when members asked what the fee structure, can we afford this or that, for myself personally I have always thought that how do you get any fee structure at this point when we do not even know what it takes to build, what is the electricity, what is it going to cost? How do you do something... how do you compare what the Veterans Center is doing or what the Convention Center is doing and how do you play a fair game and if you price something and you are obligated to stick to that price, it might not offset expenses. I think at this point any business man would say if we break even, we break even. Should that not be the fair goal? If we pay our expenses and you mark it up ten percent (10%) – I do not know, I just think it is too early to give any educated guess as to what you are going to charge. I would rather see the place in operation being built and talk about these things and have different structures for the children, seniors and then there may be corporate America that comes in that need to rent out the facility, if it is a media center or a convention for a speaking group organization that can afford and would be willing to rent this for for-profit venue itself. I just want to say for myself, I think it is very premature to ask or to say "this is what it is going to cost," let us just figure out what the dynamics and the diversity of the whole thing is going to be and then we can set a fee. I just want to remind the whole community and thank all of you guys for sticking forward. We should all understand that there is no discrimination, everybody can use it, and it is going to be a great addition and facility not just for Kaua'i but for the State.

Mr. Kualii: I too want to thank the leadership of the Kaua'i Philippine Cultural Center and the entire Board. This is a significant move for our community and I think it is important that we perpetuate the Filipino culture. Ninety-nine (99) years lease of one point four (1.4) million dollar land investment by the County is a really big deal and I just want the community to recognize that and that we are all in it together and that this is a good thing to support. Some concern that I did hear was to ensure that there is a public purpose and that all people will be invited to participate and experience and learn about the Filipino culture whether it is a museum or library or whatever form that it does take. I do think that while it is too soon to determine fees, it is not too soon to commit to making it accessible and affordable to everyone. A lot of our working class families come from very minimal needs and any kind of fee just to view... and I know you will think about that because that is who we are, we grew up in the Plantation Camps and we are the working families and the fee has to be low enough so that everybody has the opportunity. A lot of the non-profit organizations even in their membership right, they have a membership fee of twenty-five dollars (\$25.00) a year or something and they also have the clause that says no one denied membership or no one denied access because of financial difficulties. They could make a petition to say I want to participate, I cannot afford it and that you will allow them as well. I know you will consider those things. I just want to thank you for all your work and for bringing it to this place and congratulations on the moneys you already received – you are getting through the Legislature and I know that this lease will help you use it as leverage for going after even additional money. I wish you the very best.

Mr. Rapozo: I just want to say that Honolulu has a Filipino Cultural Center up in Waipahu and I have been able to use that facility for different functions and it works really well for the entire community. I expect the same of

this facility once it is constructed. Realizing that this will not happen overnight, the license gives ten (10) years to get to substantial completion and hopefully we will see it a lot sooner but the reality is that it will be a wonderful asset for the entire community and I have total trust in the KPCC that it will happen. I can remember at the Filipino Chamber of Commerce, it was the inauguration speech of Lester where he called a unification of all the Filipino groups to come together for this one purpose to finally realize the dream of having a Filipino Cultural Center. I cannot tell you how long before that the seed was planted by others but I know that night the unification call was made and I am sure there were many people in the audience that were skeptical but today we are here at phase one (1) and the County is making a huge investment which I fully support. Now, the ball is in your court to get it done. I am proud to be here today, I cannot wait for that building to be constructed and I cannot wait to be one of the users of that facility. Congratulations on this first phase – we are at first base and now we got to circle the bases and come home. Good luck.

Ms. Nakamura: I think Ian Jung said it right that this is a public/private community partnership. I want to just recognize KPCC, the vision of the leaders of the organization who are moving this forward in a real no nonsense way and making a lot of progress. I am happy that you are doing two (2) things. One (1) is that you are learning from the other Filipino Cultural Centers on other islands, what work and what has not worked, so that we can build on that. The second thing is that moving forward with your feasibility studies so that we can actually pencil this out and see how it works and talking to different sources – funding sources including Federal sources and the foundations to see how we can get the capital funds invested on Kaua'i for this project. Thank you very much for your hard work and commitment.

Ms. Yukimura: Sometimes details are so tedious and time consuming but necessary and I want to thank KPCC and all of the supporters of the center for your patience. I want to thank Ian Jung and the County Attorney's Office and their staff and our staff for all the work that went into doing this clear agreement as possible. I want to especially acknowledge the leadership of KPCC for holding the vision and moving so deliberately yet very boldly to move this project ahead. It is a huge project that will benefit the whole community; you are the pioneers in doing this kind of public/private partnership on a new level. It is so uniquely Hawai'i and so uniquely Kaua'i and we really thank you for your leadership. I appreciate how you are doing it with professionalism, business acumen and dedication just to benefit everyone. It is so wonderful to be able to vote today.

Chair Furfaro: I want to thank the County Attorney's Office for their work on this but the community of Puhi is certainly growing and it is evolving into one of the significant parts of our island very central and the fact that we will be looking forward to assuring space for all of our community at reasonable and affordable prices is yet to be worked out but it is great that we were able to get through this and through meetings have mutual understanding with the community, Administration, and the Council on getting us to a good place to be. I also want to take the time to say that this was really a joint effort that I want to thank our Legislative team in Honolulu that worked with the State to earmark some money so that when we are able to come to being able to deliver a mutual agreement on the ninety-nine (99) year lease that there is money available. This will be a great value to our community, I am really pleased that we are at this point. I also want to say if there is need to get documentation from the Council when they go to solicit the money that was set aside, I am sure we will do whatever

we can in a way of correspondence. Congratulations to those that have worked so hard to get us to this point. I think we are all pleased that this would be another asset for all of our community to enjoy. I would like a roll call.

The motion to approve C 2012-227 as amended, was then put, and carried by the following vote:

FOR APPROVAL: Bynum, Chang, Kualii, Nakamura, Rapozo
Yukimura, Furfaro

TOTAL – 7,

AGAINST APPROVAL: None

TOTAL – 0,

EXCUSED & NOT VOTING: None

TOTAL – 0,

RECUSED & NOT VOTING: None

TOTAL – 0.

There being no objections, the Council recessed at 12:05 p.m.

The Council reconvened at 1:35 p.m., and proceeded as follows:

Chair Furfaro: Please read the next two (2) items together because they are financially related.

BILLS FOR FIRST READING:

Proposed Draft Bill (No. 2441) - AN ORDINANCE AMENDING ORDINANCE NO. B-2012-736, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2012 THROUGH JUNE 30, 2013, BY REVISING THE SURPLUS AND APPROPRIATIONS ESTIMATED IN THE GENERAL, HIGHWAY, AND SEWER FUNDS: Mr. Chang moved for passage of Proposed Draft Bill No. 2441 on first reading, that it be ordered to print, that a public hearing thereon be scheduled for August 22, 2012, and that it thereafter be referred to the Committee of the Whole, seconded by Mr. Bynum.

Proposed Draft Bill (No. 2442) - AN ORDINANCE AMENDING ORDINANCE NO. B-2012-737, AS AMENDED, RELATING TO THE CAPITAL BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2012 THROUGH JUNE 30, 2013, BY REVISING THE SURPLUS AND APPROPRIATIONS ESTIMATED IN THE GENERAL, BOND, AND SEWER TRUST FUNDS: Mr. Chang moved for passage of Proposed Draft Bill No. 2442 on first reading, that it be ordered to print, that a public hearing thereon be scheduled for August 22, 2012, and that it thereafter be referred to the Committee of the Whole, seconded by Mr. Bynum.

Chair Furfaro: Members, this is first reading but what I would like to point out, I want to give you my overview on this as Committee of the Whole Chair, and then we will go into Committee discussions and then again for the Bill for second reading. Before us are these two (2) money bills that are being introduced by the request of the Administration. The first is to actually amend the operating budget and the second is to amend the CIP budget for the year 2013. During the Finance Department's internal review of the CIP, it was determined that these amendments were needed so that there would be significant funds – sufficient funds to cover the proposed CIP projects. This notification is hopefully remedied through these two (2) bills as they are required of the Kauai County Charter. The first one is to actually review what CIP items are actually needed to be financially supported because during the post budget period, it was certainly determined that in that session the actuaries for the reporting of employee benefits

was over the amount we needed. In other words, we got the actuary in July which will show us about a two point four (2.4) million dollar savings. The money will come out of the actuaries to cover what has changed in the CIP and some of the items that have changed in the CIP included the fact that the Administration and they are entitled to do had encumbered some funds which were identified because we had approved the CIP budget from 2012. In particular, item might be the fact that they had encumbered all five hundred thousand dollars (\$500,000.00) for the Drug Treatment Facility at the time we were not totally aware of that in the budget presentation but we are required to be able to have this balanced budget and so this bill basically shifts the savings we had in the (inaudible) account from the operating budget to the CIP budget. That is the purpose of introducing this piece on first reading. I also want to point out that this does not affect when the County continues to have one hundred percent of our required (inaudible) funds contributed, this was not affecting that but we had an actuary report in March that was approximately – we were at about thirty-five percent (35%) in the amount tied to the actual PT&E payroll. Then that was reviewed by the actuary in early May and it came down to about thirty-one percent (31%) so we had some savings. In July, they are required to give us the final account summary and we actually ended up about twenty-nine, eight (29.8) and we have people from Finance here that can reconcile these numbers better than what I have read. It is those moneys that will be saved in this budget period and have an adjustment of about two point five (2.5) million dollars. It is that money that will be used in shifting to bill 2442, the reconciliation of the CIP which is actually funded short from what it was at our original budget meeting. That is an overview of what this is. I am not going to be answering the questions that you may have, I just wanted to give you an overview and that is why I asked the Finance Department to be here. This bill is about moving the money we saved in EUTF to cover what later was reconciled as a shortfall in the CIP and if you have questions, more detail than what I gave in this first overview, I have the Finance people here.

Mr. Rapozo: I do not have a question for you but I have a... and just information for the colleagues on the table, if I may?

Chair Furfaro: Yes but I have some more to share.

Mr. Rapozo: I brought this to the attention of the Chair and I really appreciate you getting it on the agenda at the soonest possible time because I think it is critical. I think as we look at this, there are two (2) money bills and for the first money bill, the OPEB account being decreased by two point one (2.1) million, I can understand your dialog but I know I asked that question in the budget session, "are we really over budgeting in the OPEB account?" I guess it is clear today that we did.

Chair Furfaro: I do want to say in the defense of the Administration, remember we did not get the final number from the evaluator until July. So it is fifty percent (50%) and fifty percent (50%) there, either we budgeted short than what we drafted or when we got the actual number, we had a surplus which is what the case is now.

Mr. Rapozo: The other information that I think is important to note today and I am glad that the County Attorney is here because I will be sending over communication to them and this is pertaining to bill 2442. On May 11, 2012, that is when we had the budget session where the Administration came up and reduced the funding of the Drug Treatment Center to move into the General Fund budget of this fiscal year to balance the budget. In other words they said to balance

the budget, we got to reduce some CIP projects and you see the reductions on the bill but five hundred thousand dollars (\$500,000.00) from the Adolescent Drug Center was going to be moved to General Fund, that was on May 11. On May 30, this Council passed the budget on final reading – on second and final reading, and on June 20, the Administration encumbered the five hundred thousand dollars (\$500,000.00) that was to be reserved to balance the budget for this fiscal year in addition to the two hundred thirty thousand (230,000) and so forth. In other words, the budget is not balancing, that is my bigger concern. That is the question I have for the County Attorney that if the staff could note, please send that over as of today. That five hundred thousand dollars (\$500,000.00) in addition to the funds that you see are not in our budget because they did not have it to transfer because they encumbered it, which means this budget that we currently are in is not in balance and that is a concern. I believe it is in violation of the Charter. We need to act with some expedience on this and I understand we have to go through public hearings and so forth, but the bigger question is for the County Attorney's Office is how do we get around that violation? I cannot believe that after the budget was approved on May 11, June 20 which is almost three (3) weeks later, moneys that we were to use to balance the budget were encumbered. After we were told here, that they were going to use those funds and again I am just speaking of the five hundred thousand (\$500,000.00) because it is the biggest one but there are other funds, in other words, the people in the Finance budget cannot balance the budget because the money we approved in the budget to transfer were not available. I think it is a big problem. I do not think it ever happened here as long as I have been here. I wanted my colleagues to understand that May 11 is when we were told that five hundred thousand dollars (\$500,000.00) were going to be reserved to transfer in the near fiscal year. On June 20, they encumbered the funds and now we are in a little pickle; I guess the County Attorney's Office can help us to find out where we go from here. I appreciate the opportunity, Mr. Chair, I know we do not normally get a chance to speak on first reading but I think as we prepare for public hearings and prepare for Committee Meetings, I think it is imperative that we remember and to be honest with you, I completely forgot about the five hundred thousand dollars (\$500,000.00) when we met with the drug office in relation to encumbering the funds, I wish I had remembered, I just did not. The encumbered funds has occurred and now we are short in our budget and I do not think it is the right way to do business.

Chair Furfaro: Just to correct some of the narrative, on June 22, the Anti-Drug personnel came to see me and said, "oh Chairman, we had encumbered that five hundred thousand dollars (\$500,000.00)" and I immediately had sent out some red flags to say, "you need to begin dialog with the Council because that was not what was presented to us on May 22." I got word first, even though I certainly appreciate our being able to have some dialog that that was encumbered, I was informed that that was encumbered already. One thing that you need to remember, folks, and this is really important and we will have more definition from the County Attorney in the future, once we approve that CIP, the Administration does not need Council approval to use any of that money. That is currently not the practice. It is disappointing that I got the information on June 22, it is important that I got this on the agenda, thanks to Mr. Rapozo's query with me, as soon as possible because we are reconciling the year end in the month of July. Again, we were fortunate that we did over budget and here is the specifics, the March accruals for the EUTF was thirty-four percent (34%), it was adjusted in May 2 to thirty-one percent (31%) is the exact number and in this week in the actuarial report, the final report, it was twenty-five point five percent (25.5%). Fifty percent (50%) of this or fifty percent (50%) of that, we would have been in bigger trouble if we did not actually budget the EUTF at thirty-four percent (34%) at the

time. The total adjustment that we got in July amounted to two million, five hundred twenty-nine thousand eight hundred and twenty dollars (\$2,529,820.00) that is what I had found out.

Ms. Yukimura: Excuse my ignorance - it is "EUTF," what is that?

Chair Furfaro: It is "E," "U," "T," "F."

Ms. Yukimura: Okay.

Mr. Rapozo: OPEB – same term.

Chair Furfaro: Yes, OPEB, I got more refined with Employee Trust Account... but we were over estimating that exposure.

Ms. Yukimura: At the beginning it was like fifty percent (50%), was that because they added OPEB to something else?

Chair Furfaro: We had a visit from the State Finance Department and that is what you are referring to and they had expressed for us at the time that that was the percentage to use. The budget department went in and had a further evaluation for the first go around of the budget and it was at thirty-four point seven (34.7).

Ms. Yukimura: Okay. I have some questions about that process in determining the number.

Chair Furfaro: You think "you" have some questions.

Ms. Yukimura: I am glad I am not alone.

Chair Furfaro: Part of that in defense of the Finance Department is Alvin retired on us back in February of the previous year.

Ms. Yukimura: And we had no succession planning.

Chair Furfaro: We had no continuity to then Annie taking on some burden then six (6) weeks before we started the budget, we brought in Ken to replace him and so we had some real moving parts here. If I may say, if you had any questions, it would be better for us to resurfacing them now but not expect the answer now because this is only the first reading.

Ms. Yukimura: Alright. I would like to request that that information that you read be circulated.

Chair Furfaro: This is my notes after looking at it for the first time yesterday.

Ms. Yukimura: Perhaps the staff can put it into a memo and...

Chair Furfaro: Perhaps we can ask them to send us copy...

Ms. Yukimura: That would be fine, Chair. And also Councilmember Rapozo, your chronology, would you be able to make that available to us.

Mr. Rapozo: Here is mine right here.

Ms. Yukimura: I know, I can see.

Mr. Rapozo: I will have this in form, I will probably have a presentation at the Committee Meeting as well.

Ms. Yukimura: I appreciate the research and I feel like I have not really absorbed it so it would be helpful to have it in a memo that I can read and digest.

Chair Furfaro: I do want to add one (1) thing here. Mr. Rapozo wants to make a presentation, that is fine, I do not have a problem with it. But part of the problem here, we got to start getting the accounting staff talking to the Finance staff, so I want to caution all of you if you are getting information from Accounting and presenting something that has not been reviewed by Finance, then I got a problem with that. The first challenge on our hands is, they need to be talking to each other, not talking to us, that is the first challenge. If we are going to get this corrected through this money bill and hopefully have some savings because of the actuarial evaluating our EUTF funds, then we want to come to a common conclusion without canceling any projects that were budgeted for in CIP. I think we had a very difficult calendar but I have to tell you if we go to one (1) forecast, this problem is not going away from us because year after year, we are still going to get the actual actuarial almost in the beginning of summer. We have to do our best evaluation and we have to understand it better. On that note, Ernie, are you prepared to come up and digest some questions and as I pointed out, we can hold those questions until the second and workshop on this before we get to the second reading.

Ms. Nakamura: Maybe this is more of a request that we have a separate briefing on OPEB, the timeline for receiving reports and is there any way to change the cycle to receive reports that would feed in to the budget process? I am not sure if it is possible but I would like to explore that.

Chair Furfaro: Yes, it is a shall or may question but I do want to point out to you that last year when we were still down at the old facility, I brought over the State controller, I brought over the State OPEB Administrator to give us some feedback on this and the picture that was painted to us is that number might have actually been higher as JoAnn has mentioned. It is this moving target that is going on and I am saying as we move the budget workshop up, I do not know and it is a good question if we are going to solve this question about the evaluation of the employee cost. This is a big question but it is a big question for Finance so let us put that at the top of the list if we can – staff please report – have an overview of the critical path related to employee benefit estimates for the purpose of budget. We will make that the first question. I do not have a problem if we have to bring the State people back to talk with us but last couple of times we brought the State over, they asked us to pay their way, and they are broke.

There being no objections, the rules were suspended.

ERNIE BARREIRA, Budget and Purchasing Director: Good afternoon.

Mr. Rapozo: There are two (2) different issues, I think. The Chair explained the availability of funds to replenish these accounts, so that is one

(1) issue and that is an OPEB issue that I agree I am glad we have that funds available, I am glad we over budgeted. That is a separate issue, that issue is one that should be discussed so we can better understand how OPEB works and how can we be off by so much. As far as the reasons for the money bills, the first money bill which is 2442, the reason why we needed to transfer the funds is because in the budget that we approved, we failed to include the funding appropriations for the General Fund CIP, the Highway Fund CIP, and the Sewer Trust Fund CIP, they were missing in the budget. On July 1, when Public Works, Highways, or these projects that are on the books that were approved by this Council, they are ready to go... oops, we forgot to appropriate the money in the budget. So the first question is, how did we forget that such...

Chair Furfaro: I want to make sure you define "we."

Mr. Rapozo: County.

Chair Furfaro: Okay, very good because...

Mr. Rapozo: "We," approved the budget but we do not know what we do not know...

Chair Furfaro: We saw numbers that they provided.

Mr. Rapozo: Correct. But those funds were lacking and frankly and I am not going to take the credit for this but someone brought this to my attention and that is where I got to meet with the Chair, we had to notify the Administration, "where is the funding for these projects?" Maybe we forgot to put it in. Now, we got to scramble and find the money to fund this budget items and I am not sure if some projects are being held up, this is going to take a few weeks, that is the first question and I only have two (2), Mr. Chair. The first question is how did we forget that?

Mr. Barreira: Councilmember Rapozo, I have asked to come up two (2) of our very outstanding budget analysts Anne Wooten and Ken Shimonishi and they will be answering whatever technical questions we can answer today and appreciate the opportunity to do an analysis and answer your written questions when they are transmitted to us.

Mr. Rapozo: And Mr. Chair if it is okay... we can wait...

Chair Furfaro: I will restate this first reading item, I am going to allow people to ask questions of you. I am not asking you to mandate a response today but I clearly want us to understand the question and respond to us because we are going to be scheduling this on August 22 and the Committee Meeting will be September 5. I am going to give Mr. Rapozo the floor so that he can restate those two (2) questions and that is question two (2) and three (3) because mine was the first question as modified from Councilmember Nakamura.

Mr. Rapozo: So, that was question number two (2) in the Council's submittal and the final question is one that I talked about earlier, how did we encumber funds from various accounts? For me, it is the five hundred thousand (500,000) that is the most burning one for me. How did we encumber funds that were already committed for the subsequent year's budget? I do not think it is a Finance question but somebody had to have said, "wait a minute, you cannot use that money, we need that money in 2013 to balance the budget." Somebody must

have said, "use the funds encumbered," but then there is no adjustment to be made and again, you heard my other question that is going to be for the County Attorney but I want to see a chronology of what occurred and up to the expenditure or the encumbrance of these funds. I cannot see how that happened when those funds were already committed to balance the next year's budget and that is troubling for me. It could be a costly mistake because now we need to take funds from our facilities reserve, we need to take funds from our ADA projects, to balance the budget and that is of grave concern to me. That is the two (2) questions I have for Finance and Budget and let me just recap – how did we forget to put that in the budget and number two (2) how did we encumber funds that were committed for the following year's budget? That is all I have, thank you.

Chair Furfaro: We can wait until you guys completely understand those two (2) questions, it is a cool hand Luke question, "the failure to communicate" and we need to improve on that.

Ms. Yukimura: I need to see the chronology of events so I might have more questions later but my questions right now relate to the process of setting the OPEB? Let me ask a larger question, we have the base salaries of employees and then we have OPEB... I mean we often talk about the additional amounts to the base salary that we always budget because they are an obligation, right? My understanding when we started the budget process is that we were using fifty percent (50%) or something like that. Now it is down to twenty-five percent (25%), how did we get there? That is huge and do we do it year by year? Don't we have a rule of thumb that kind of works until we have maybe a new collective bargaining agreement and then it might change because our other agreements made but does it change year to year and based on what then?

(Inaudible)

Chair Furfaro: I would prefer they not. The fifty percent (50%) term that people were using about OPEB, right? What is the difference between OPEB and EUTF? Can you answer that now? So that we can all understand what we are getting from the State as far as information and what we are getting from our actuarial.

ANNE WOOTON, Budget Analyst: Councilmember Yukimura, I believe your question was what is the difference OPEB and EUTF?

Ms. Yukimura: Well, maybe my question... and it is close... I am asking what makes up the non-salary percentage that we are adding?

Chair Furfaro: (inaudible) because one (1) number we get from the State and one (1) number we get from our actuarial.

Ms. Wooton: I heard some discussion surrounding the OPEB. OPEB at one time was combined with health fund, so there might be some confusion about what was combined with at one (1) time and now it is separate expenditure line items and there are personnel expenses. OPEB is by itself, I have never known OPEB to be at fifty percent (50%) since I have been looking at salaries and so forth.

Ms. Yukimura: Let us tell everybody what we are talking about when we say "OPEB – it is Other Post Employment Benefits," and maybe it will

help if you specify what those Other Post Employment Benefits include. That must include pension obligations?

Ms. Wooton: I believe that is health fund benefits for our employees once they retire.

Ms. Yukimura: Okay, that helps.

Ms. Wooton: I am not an expert at this, that is my understanding of what OPEB is.

Ms. Yukimura: So, it is Post Employment Retirement, is that what you are saying?

Ms. Wooton: Medical.

Ms. Yukimura: Oh, medical, excuse me. Post Employment Medical...

Ms. Wooton: Other Post Employment Benefits.

Ms. Yukimura: Anything else?

Ms. Wooton: As far as I know it is that is all it is.

Ms. Yukimura: And then EUTF?

Ms. Wooton: EUTF is where the OPEB is paid to if I understand it correctly. That stands for Employees Union Trust Fund.

Ms. Yukimura: There are medical obligations; do we not put aside certain pension requirements based on salary?

Ms. Wooton: Correct, that is another personnel expense type.

Ms. Yukimura: What do they call that generic amount that is non-salary? Is there a name for that? We say somebody gets fifty-five thousand a year and that is their salary, then we use a percentage number to add something else to the budget because those are obligations that come with that salary.

Ms. Wooton: Correct.

Ms. Yukimura: And we speak of that in terms of a percentage?

Ms. Wooton: Correct.

Ms. Yukimura: Okay, what are all the things that make up that percentage that we put aside?

Ms. Wooton: And understanding budget, I might not give you the correct terminology as far as payroll might understand it but it is retirement is one (1), health fund, so if an employee chooses to take medical while being an active employee, OPEB is of course is for post employment, so that is once you retire. Social security of course which is a set rate going into the Federal Government.

Chair Furfaro: We have in there the health, we have social security, we have the retirees, and we have EUTF that we pay to OPEB.

Ms. Yukimura: Other way around.

Chair Furfaro: Other way around, I am sorry. Now, let us not get so tied into that right now, I am saying to you folks that I am allowing you to come back with those answers. For members here if you can refer to the County of Kaua'i Fiscal Budget Year 2013 which was submitted to us on March 15, you have it in your packet. There is the exact breakdown here for salary allocations, social security, health fund, retirement system, OPEB and those (inaudible) and this is where the fifty some odd percent is.

Ms. Wooton: Correct.

Chair Furfaro: And it ranges depending on Department from fifty-two percent (52%) to almost fifty-seven (57) by Department. But this was a blended number. Now, I would like you to reference this description and reference the narrative from us on all of these so we do not go through the questions again and I think that is what the Vice Chair is looking for.

Ms. Yukimura: It is, thank you.

Chair Furfaro: And when I say "EUTF," it is the Employee Union Trust Fund. Those are people that we pay that administer – did I get that backwards again?

Ms. Yukimura: No.

Chair Furfaro: That administers the OPEB.

Ms. Yukimura: Yes, okay. Thank you very much.

Mr. Barreira: Chair, your expectation of the chart analysis will come as question six (6) or seven (7)?

Chair Furfaro: Yes, we will send these over. Scott, can you frame these questions. Give us the narrative again on all those line items that we just covered.

Mr. Barreira: Understood.

Chair Furfaro: Again, this is only first reading, are there any specific questions that you want to go over?

Mr. Bynum: Maybe we need a separate agenda item about the Adolescent Drug Treatment Center.

Chair Furfaro: We can do that. I would be glad to do that because as I said, Mr. Rapozo brought this to my attention, but also on June 22 someone from the Administration came over to tell me and this is after we have gone through the budget sequence that we did encumber all three phases of that money. That was disclosed to us sometime afterwards and I said to the members of the Administration that you need to go back and visit with every Councilmember

because that was not presented to us during the budget cycle. We will put a new item on.

Mr. Bynum: I do not want to come to any conclusions but it just does not jive.

Chair Furfaro: I agree. Let us not come to any conclusion but what money had in it the certain evaluations, certain design components and so forth and I do not think the Council in May had agreed to all of those components. At the same time, and this is the question for the County Attorney, I want to make sure we understand that once we approved the previous year CIP, it does not come back to the Council any time. Once we had approved it, the Council cannot then say unless we put a specific proviso in there, we cannot come back and ask you to get our approval again to encumber those funds. That is where we go astray.

Ms. Nakamura: A lot of the discussion has been about the Adolescent Drug Treatment Center but I noticed there are other projects as well that is being added and then subtracted – can you just describe the thinking behind those changes?

Ms. Wooton: What exactly was your question?

Ms. Nakamura: I was wondering how did these other items... is it now there was this additional funding available that more projects are being added to the General Fund CIP?

Chair Furfaro: I think the way we should send over that question because we should not ask the Finance guys to express how did we reduce the Sewer Fund...

Ms. Nakamura: Oh okay.

Chair Furfaro: What did we do with Roads and so forth? Those are typical questions that should be coordinated with Finance through the Engineering Department and so forth. So, there were three (3) other projects that were adjusted?

Ms. Wooton: Six (6)?

Chair Furfaro: Okay, we will relist those projects in a form of a question – how did they... because it looks like money was again encumbered there after the budget process. So, it was not there when we... where we are at now, that is why we got to move money there. We will send those over for Councilmember Nakamura. Do you understand the project list that she is referencing?

Ms. Nakamura: Councilmember Rapozo was exercising some caution because this is first reading but I think it is a good thing to do to raise questions early in the process. First reading is a good time to do that because the next step is public hearing, I believe.

Chair Furfaro: And again, we are dealing with past practice that was not the rule, that was the past practice and obviously I am letting us have discussion. That is not the current practice but giving them time for the questions, do not expect the answers if you want any accuracy and quite frankly that is the problem right now, we do not have accurate information.

Ms. Nakamura: I think that helps in the public hearing process where it is clear to the public what are the issues and I think that is what we are surfacing now.

Mr. Rapozo: Which office or division of Finance is responsible for the encumbrances or moving the money? Is that the Budget Office, Finance Office, Accounting Office? I am not saying giving authority but who actually puts it in the computer and say this money comes from this account to another account.

Ms. Wooton: That would be the two (2) of us. The two (2) analysts.

Mr. Rapozo: That would be out of the Budget Office – Finance?

Ms. Wooton: Correct.

Mr. Rapozo: If we could get the encumbrance dates or the funds for these projects that are on this money bill.

Chair Furfaro: For those six (6)?

Mr. Rapozo: Yes. Apparently what happened was when the transfer was attempted, there was no funds there. We were short in these accounts by this number.

Ms. Wooton: Yes, correct.

Mr. Rapozo: The next question is really for Ernie, as of today, is our budget balanced?

Mr. Barreira: (Inaudible).

Mr. Rapozo: It is not? As of today, are we operating with an unbalanced budget?

Mr. Barreira: Yes sir, it is not balanced as we speak today. That is why the money bill has been submitted for consideration.

Mr. Rapozo: Okay, thank you very much.

Chair Furfaro: And is the General Operating budget that has the surplus in it and it is the CIP budget that has the shortage of it?

Mr. Barreira: Yes, sir.

Chair Furfaro: Okay, I want to make sure we are clear here. The Operating Budget actually has the surplus...

Mr. Barreira: Yes, sir.

Chair Furfaro: Now that we got the final actuarial on our benefits.

Mr. Barreira: That is correct, Chair.

Chair Furfaro: Any more questions for first reading? Ken, I want to thank you and Anne for your working on the budget. I do not want us to have a misleading assumption here because as I said we went almost six (6) months with Alvin retired, we then had Ken come on six (6) weeks before we do the budget and Anne was by herself for almost six (6) months. It is an opportunity for us to make some improvements going forward and could I also ask if we can have some information dealing with the actuarial on the adjustments that were made, so that we are all squared. Total package PT&E is about fifty-two (52) to about fifty-six percent (56%) and in there is a part of the credits that we did get in July after they did our full evaluation. We will see that in the future having to deal with trying to get better information early on. We will send these questions over and we do want to make sure that we get a quick turnaround and we will schedule it for August 22. We will make sure that everybody understands there is no policy as stated here that we do not ask questions on the first reading, that is a different practice now. It is important that if we ask the question, it is for the purpose of giving you enough time to get us back accurate information. We would like to have the answers on August 22 because we will have a public hearing then on the bill.

Mr. Barreira: On August 22, Chair?

Chair Furfaro: That is what we have it scheduled for public hearing. We would like to have an understanding before the public start asking us questions, we have the answers to the questions that we are sending over.

Mr. Barreira: Understood, sir.

Chair Furfaro: That gives you four (4) weeks.

Mr. Barreira: Very good.

Chair Furfaro: And then it goes onto Committee on September 5. Does anyone want to speak on this item?

LONNIE SYKOS: The testimony today illustrates how expensive it is for the public to fund what is obviously an antiquated and grossly inefficient system and I applaud the Council for your public commitment to improving the efficiency and the quality of Council Services. Nowhere is this illustrated more greatly than year after year at the budget hearings, having an incoherent budget presented to the County and then having issues such as... or coming up today occurring. It is inconceivable that in 2012, the Accounting and the Finance Departments do not have a fully integrated computer system. There are contractors out there who go all over the world, including at Barking Sands, and design, implement, and integrate civil systems. There is no excuse from the County not to get their act together and be able to do the accounting and the financing in an efficient manner. I thank the County Council for your efforts in trying to achieve this in County Government but it is not acceptable to me as a taxpayer to listen year to year and look at the expense of paying all these employees to come and straighten out accounting issues. Thank you all for bringing this to public attention and dealing with it and my support for all of your efforts to get a system that finally functions well.

Chair Furfaro: Lonnie, I just want to reassure you that over time we are constantly making improvements and this is one (1) of them. I shared with you, we had one (1) visit from the State on percentages, then we had a retirement, then budget starting up with a new budget analyst six (6) weeks before we started,

so I think the emphasis you want here is let us communicate better and if we need to use linked computer information, let us take a step in that direction.

Mr. Sykos: Best practices.

Chair Furfaro: That is what it is called. Thank you. May I ask Amy to come up for a moment please?

Amy, I know that Mr. Rapozo had a question to send over to the County Attorney's Office, I would like to give him the floor to ask that but I would also like to ask a question so we will probably be sending over two (2) questions. It is something that has come over in the past dealing with this approval process for the budget when we approve the CIP plan, there is no requirement for these different engineers and building people to come back to get approval. Once we applied this CIP, it is approved but how in the future for larger projects can we better understand a proviso that on certain projects that are phased out, we have an opportunity to implement a proviso that modifies the budget approval?

Mr. Rapozo: I think you heard my question, we will obviously put it in written form and again I think the concern is that number one (1) we are operating with an unbalanced budget. As I read the Charter, I think we are mandated and I believe that shall means shall pass a balanced budget. I believe the Council passed a balanced budget on May 30 because the budget that we passed was balanced. It is not something the Council did, but I think the action on June 20 by the Administration to take the committed funds and encumber it, took that balanced budget that was passed on May 30 and all of a sudden became an unbalanced budget effective July 1 because there were no funds in there to transfer from the CIP fund to the General fund. I only used the Adolescent Drug Treatment Center like I said earlier but that encumbrances or inaccurate line items include the Convention Hall as well – improvements to the Convention Hall, again ADA projects, the levees in Hanapēpē and Waimea, and some very small projects. But the Council fulfilled the Charter mandate to passing a balanced budget but when the encumbrances of June 20 were made, I think that is where the problem happened. That is what the questions will be that will be sent over and I am hoping we can get that back by the same.

Chair Furfaro: At least a week before the public hearings so that makes it August 15.

Mr. Rapozo: Is that something that... If it is not enough time?

Chair Furfaro: I am not saying you have a choice, you have three (3) weeks, I accept the answers.

AMY ESAKI, First Deputy County Attorney: Yes, I have it noted on my notes.

Chair Furfaro: Amy, I know you will cooperate with us on that, but you can see now the question that I had versus how it ties into Mr. Rapozo's because the approvals that we gave for the Convention Center were actually last year for that money but it showed the balance that existed and it was not the same with the levees and so forth. It is very important for us to understand once we approve the CIP, is it a fact that the Council no longer has purview over the spending of that money and the only way we get it is by doing a proviso.

Mr. Rapozo: One last question, it is more of a process question. I look at this as a very serious issue we got to fix right away and I realize that we got to pass this through two (2) readings and a public hearing and maybe this question is really for our staff but can you also look at... if it is as severe as I think it is, is it possible to do a public hearing on the same day we do the second reading?

Ms. Esaki: (inaudible)... on the second reading?

Mr. Rapozo: Yes and I think we do it for the budget, do we not do the public hearing the same day as the... (inaudible) and if it is a policy question or process question with our staff – they will answer it. My concern is getting this thing in compliance with the Charter as soon as possible.

Ms. Esaki: So I have three (3) issues here. Thank you.

Chair Furfaro: We will send the last question over as a separate item because we would like to keep that for record in future references having same day public hearing as we do the final reading – second reading bills. Amy, thank you very much. I have great faith that you will get back to us by the 15th.

There being no objection, the meeting was called back to order.

The motion for passage of Proposed Draft Bills Nos. 2441 and 2442 were then put, and carried by the follow vote:

FOR PASSAGE: Bynum, Chang, Kualii, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST PASSAGE: None	TOTAL – 0,
EXCUSED & NOT VOTING: None	TOTAL – 0,
RECUSED & NOT VOTING: None	TOTAL – 0.

There being no objections, the rules were suspended.

Ms. Esaki: Good afternoon.

EXECUTIVE SESSION:

ES-563 Pursuant to Haw. Rev. Stat Sections 92-4 and 92-5(a)(4), and the Kaua'i County Charter Section 3.07(E), the County Council requests this executive session with the County Attorney to provide the Council with a briefing, discussion and consultation on the quarterly report on pending and denied claims report. The briefing and consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

ES-564 Pursuant to Haw. Rev. Stat. sections 92-4 and 92-5(a)(4), and Kaua'i County Charter section 3.07(E), the purpose of this executive session is to provide Council with a briefing and request for authority to settle the claim against the County of Kaua'i by Akinaka & Associates, Ltd, filed on May 14, 2012, and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Rapozo moved to convene in executive session for ES-563 and ES-564, seconded by Mr. Chang.

Chair Furfaro: Does anyone want to speak on these items?

There being no objections, the rules were suspended.

Mr. Sykos: I have two (2) questions here that I am not directing at any individual. These are directed at what I view as failings in our process. The first one is, within our existing personnel system, will personnel be rewarded for resolving this issue that was created by jobs not being done correctly or will they not be rewarded for being involved in creating this mess that you all are going to clean up today or in the near future? My second question is, is if there is the appearance of a Charter violation or the determination by an individual or the body that the Charter has been violated, and is there a complaint trigger? Does the fact that the Council publically acknowledges the Charter has been violated, is there a mechanism that that Charter violation complaint is pursued because it is against the law to violate the Charter and if the County Government is not accountable for violating the Charter, why should anybody else be? And that is my civics question for the day, perhaps followed by the next question somewhere else as to how do I file a complaint that the Charter has been violated? Thank you.

Chair Furfaro: Here is my civic response to one of your three (3) questions, no, we do not reward for negative behavior, simple answer.

Mr. Bynum: Lonnie, the agenda item today raises lots of questions and I appreciate the Chair's systematic but to answer your primary question, I have been told by every County Attorney that I have worked with that when Councilmembers become... when Council becomes aware of potential Charter violations, it is our collective and individual responsibility to see that an appropriate inquiry is done. In terms of whether it is a crime or not, I think there is this issue of intent... we do not criminalize mistakes.

Mr. Sykos: Correct.

Mr. Bynum: That is a much larger question that we do not determine here. I hope I have answered your question.

Mr. Sykos: You have reassured me.

There being no objections, the meeting was called back to order.

The motion to convene in executive session for ES-563 and ES-564 were then put, and carried by the following vote:

FOR CONVENING IN EXECUTIVE SESSION: Bynum, Chang	
Kuali'i, Nakamura Rapozo, Yukimura, Rapozo	TOTAL - 7,
AGAINST CONVENING IN EXECUTIVE SESSION: None	TOTAL - 0,
EXCUSED & NOT VOTING: None	TOTAL - 0,
RECUSED & NOT VOTING: None	TOTAL - 0.

There being no objections, the meeting was in recess at 2:34 p.m., for the purposed of executive session.

ADJOURNMENT.

The meeting was called back to order at 3:31 p.m., and there being no further business, the meeting was adjourned.

Respectfully submitted,

RICKY WATANABE
County Clerk

\ds

(July 25, 2012)

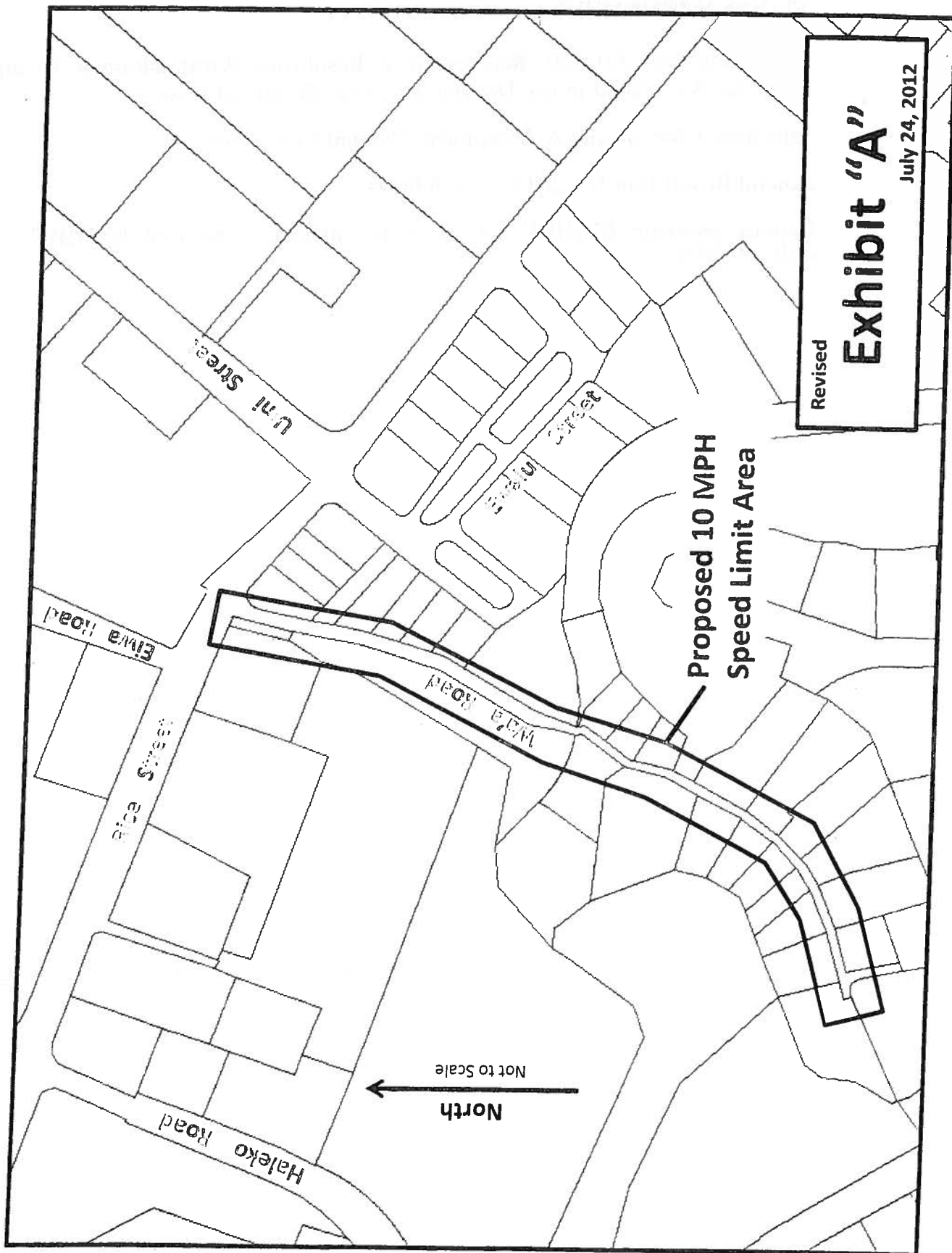
FLOOR AMENDMENT

Resolution No. 2012-50, Relating to a Resolution Establishing a 10 mph Speed Limit for Wa'a Road in the District of Līhu'e, County of Kaua'i

Introduced By: JoAnn A. Yukimura, Council Vice Chair

Amend Resolution No. 2012-50 as follows:

Replace existing EXHIBIT "A" with the attached "Revised EXHIBIT "A" dated July 24, 2012.



AFTER RECORDATION, RETURN BY MAIL (XX) PICKUP ()

COUNTY CLERK, COUNTY OF KAUAI
4936 Rice Street, Suite 206
Lihu'e, Hawaii, 96766

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PARTIES TO DOCUMENT:

LICENSOR: COUNTY OF KAUAI

LICENSEE: KAUAI PHILIPPINE CULTURAL CENTER

PROPERTY DESCRIPTION:

TMK: NO: 4/33003043

PUHI, COUNTY AND ISLAND
OF KAUAI, STATE OF HAWAII

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LICENSE

THIS INDENTURE OF LICENSE, made this _____ day of _____, 2012, by and between the **COUNTY OF KAUAI**, a political subdivision of the State of Hawai'i, hereinafter referred to as the "Licensor", and **KAUAI PHILIPPINE CULTURAL CENTER**, a non-profit Hawai'i corporation, whose business address is 1890 Leleiona Street, Lihu'e, Hawai'i, 96766, hereinafter referred to as the "Licensee";

W I T N E S S E T H:

That, the Licensor for and in consideration of the rent to be paid and of the terms, covenants and conditions contained herein, all on the part of the Licensee to be kept, observed and performed, does hereby license unto the Licensee, and the Licensee does hereby license from the Licensor all of the property described and delineated in Exhibit "A", attached hereto and incorporated herein by reference, said property situated at Puhi, Kaua'i, Hawai'i.

TO HAVE AND TO HOLD use of the premises unto the Licensee for the term of ninety-nine (99) years, commencing on the _____ day of _____, 2012, up to and including the _____ day of _____, _____, unless sooner terminated as hereinafter provided, the Licensor reserving and the Licensee yielding and paying to the Licensor a net annual rental of ONE AND NO/100 Dollars (\$1.00) payable in advance, the receipt of which is hereby acknowledged for the entire term of this License. Said License, in its entirety and as the same may be extended as hereinafter provided, being subject in all regarding to the following:

1. Licensee shall use and maintain the premises for the construction, operation and maintenance of a non-profit Kaua'i

Philippine Cultural Center facility, open to ~~[the]~~ all members of the public, subject to reasonable hours of operation. The Kaua'i Philippine Cultural Center shall be operated as represented in the Articles of Incorporation of Kaua'i Philippine Cultural Center in Section IV. Powers and Purpose of its Articles of Incorporation, dated "FILED 02/15/2011". The Kaua'i Philippine Cultural Center and the land area subject to this License shall be designated for community and cultural use. Said facility and such ancillary improvements as may be constructed shall encompass no more than three point four nine one (3.491) acres of the subject parcel.

2. Within ten (10) years from the date of execution of this License, Licensee shall have commenced substantial improvements to the subject property. If the Licensee does not commence substantial improvements to the subject property then this License Agreement shall be null and void and automatically be cancelled. For the purposes of this section "substantial improvements" shall mean that one hundred percent (100%) of the foundation has been laid, or that one hundred percent (100%) of the foundation of the active phase of a project is laid where the project is being done in phases.

3. Licensee shall not discriminate either in the hiring of staff, use of volunteers, ~~[or]~~ delivery of client services, or use of the facility on the basis of sex, sexual orientation, national origin, age, race, color, religion or handicap.

4. Licensee shall prepay rent in lawful currency of the United States at the time of execution of this License. Licensee agrees that the payment of rent does not and shall not allow Licensee to claim at any time any interest or estate of any kind or extent whatsoever in the Licensors' property described and delineated in Exhibit "A", by virtue of the rights granted under this License or Licensee's occupancy or use of the above-

described property of Licensor under this License.

5. Licensee shall pay, when due, all taxes and other governmental charges and assessments with respect to the premises.

6. Licensee shall pay, when due, all rates, charges and other costs for telephone, services, and utilities, maintain the water and sewer lines on the premises at its own expense.

7. Licensee shall not commit or suffer any waste or any unlawful, improper or offensive use of the premises.

8. Licensee shall during the term of this License keep the premises in a clean and sanitary condition and observe and perform all laws, ordinances, rules and regulations of governmental authority applicable to the premises.

9. Except as provided in Section 22 of this License, Licensee shall not assign or mortgage this License or any interest hereunder.

10. Licensee, at its own expense, shall maintain and keep the buildings on the premises during the term of this License in good repair. In the event of damage to or destruction of any improvements placed upon the premises by Licensee, it shall either repair or reconstruct the same or restore the land to the condition prevailing before such construction at its sole expense.

11. Licensee shall carry and maintain at its expense (a) workers' compensation insurance affording statutory limits, as amended from time-to-time by State statute, and employer's liability coverage with limits of not less than \$1,000,000.00 or such amount as may be required from time-to-time by the Licensor should Licensee employ any individuals; (b) comprehensive general liability insurance, including automobile accident liability, contingent liability, and contractual liability, covering all activities conducted on Licensor's property. The

limits of liability shall be not less than \$1,000,000.00 or such amount as may be required from time-to-time by the Licensor, combined single limits, bodily injury, personal injury and property damage. If the policy is written on a "claims made" form, it shall provide for an extended reporting period of not less than three (3) years. Licensor may, at its sole discretion, and after reasonable notice to Licensee, require that Licensee increase the limits of liability and damage coverage herein. All policies shall be written by companies authorized to do business in the State of Hawai'i.

12. Licensee shall name the County of Kaua'i, its officers, employees, and agents, as additional insured on each policy or policies (except for workers' compensation policy) of liability insurance procured on Licensee's behalf. All policies shall provide for not less than thirty (30) days prior written notice by Insurer and by Licensee, to Licensor, of material changes in coverage, of cancellation, or of nonrenewal. Prior to the cancellation of coverage, Licensor shall be given the opportunity by the insurer to cure any defect or default by Licensee resulting in the insurer's intent to cancel coverage. Coverages obtained by the Licensee shall be primary and not excess or contributory to any similar coverage carried by Licensor or any other additional insured. The Licensee shall, prior to the commencement of this License, furnish certificates of insurance to Licensor evidencing the above insurance coverage.

Licensee shall at all times, with respect to the property, exercise due care for public and private safety and hereby agrees to indemnify, defend and hold harmless Licensor, its officers, employees and agents, from and against all loss, damage, cost and expense, including but not limited to attorney's fees and court costs, liability, demands, or causes

of action resulting from nuisance, injury, harm, or death to persons or damage to property (including without limitation, the Licensee's employees or property) arising out of or in any way connected with the Licensee's presence on Licensor's property or with the Licensee's activities, maintenance and operations.

13. Licensee shall abide by all County building code and zoning code regulations in the construction and operation of improvements.

14. Licensee shall allow the County and its agents to enter the premises at all reasonable times for inspection. At the request of the Director of Finance, Licensee shall also make available for inspection financial documentation, including but not limited to all tax filings and annual financial reports, concerning the operation of the facility.

15. Licensee shall pay to the County upon demand all costs and expenses, including reasonable attorney's fees incurred by the County in enforcing any of Licensee's covenants and conditions contained in this License in remedying any breach thereof, in recovering possession of the premises of any part of it, in collecting any delinquent rent, taxes or other charges hereunder payable to Licensee, or in connection with any litigation (other than condemnation proceedings) threatened or commenced by or against Licensee to which the County without fault is made a party.

16. Licensee shall at the end of the said term, or any sooner termination of this License, peaceably surrender the possession of the premises to the County; provided, however, that Licensee may, and if so required by the County shall, within ONE HUNDRED EIGHTY (180) days after such termination, remove all improvements built or placed thereon by it, and restore the premises to its original condition; provided, further, that if, for any reason, Licensee does not so remove

some or all of its property which the County has not required to be removed, than all such property not so removed, without further act or deed, shall become the sole property of the County together with all easements, rights-of-way and other rights then owned or held by Licensee for ingress, egress, maintenance, use, support and enjoyment.

17. If at any time during the term of this License, the premises or any parts of it should be condemned, then this License shall terminate as to that portion which is so condemned and the award for such taking shall belong to the Licensor, except the Licensee shall be entitled to whatever portion of the award is attributable to the appraised value of improvements installed on the premises by the Licensee. Licensee may appear and defend its interest in any condemnation proceedings and make claim in its own name to the condemning authority for any value attributable to its licensed interest and for the value of any real and personal property of any kind belonging to Licensee and for the cost of moving the same and relocating to a new premises, and any such award made directly to the Licensee shall belong in its entirety to Licensee.

18. Acceptance of the annual license rent or the failure of the Licensor to take immediate action to cure any default, upon receiving notice of the same, shall not constitute a waiver of such default.

19. This License is revocable upon the failure of the Licensee to observe or perform any covenants or conditions set-forth herein. If the Licensee fails to observe or perform any covenants or conditions set-forth herein, and if any such default continues for THIRTY (30) days following written notice from the Licensor, the County may re-enter upon and take possession of the premises including all improvements and at its option may cancel this License and expel Licensee without

prejudice to any remedy or right of action which the County may have for arrears of rent or any other breach of covenant or condition of this License.

20. In the event that Licensor seeks to subdivide the parcel upon which Licensee's facility is situated, at no cost to Licensee, Licensee hereby agrees not to impede such process and to assist Licensor in its endeavor, and Licensor hereby agrees that Licensee shall be entitled to continue to utilize the same area (3.491 acres) as is set forth herein; provided however the terms shall be then incorporated in the form of a Lease.

21. After the term of this License, the parties agree that the Licensor and the Licensee may renegotiate an extension of this License for such terms as may be mutually acceptable to the parties.

22. Licensee shall be bound by the following Covenants and Conditions:

A. Use and Occupancy. Commencing on the execution of this License Agreement, the Kaua'i Philippine Cultural Center shall be used as a community cultural center to facilitate community events, gatherings, and educational opportunities. However, the Licensee may sublicense any portion of the premises to a "non-profit" or "for profit" entity. In the event of a sublicense, the Licensee shall ensure that any Sublicensee complies with Sections 11 and 12 of this License. Furthermore, all other obligations of the Licensee to the County under this License, shall apply to any Sublicensee. All proceeds earned from Sublicensees shall be solely for the operational and physical plant expenses of the Kauai Philippine Cultural Center.

B. Public Usage. The Kaua'i Philippine Cultural Center shall be open to the public, subject to reasonable hours, and encourage all ethnic groups and organizations usage of the subject parcel, improvements or facilities.

C. Subject to Grant Requirements. The use of the subject parcel, facility, and improvements shall be limited also by any requirements set forth in grants obtained to construct, operate or maintain the Kaua'i Philippine Cultural Center.

D. Establishment of Fee Schedule. Licensee shall allow the general public use of the facility for events and gatherings for a reasonable fee. In addition, the Licensee shall establish a reasonable fee schedule at a rate to cover utility and operational expenses for use of the facility for County or County-sponsored events and gatherings.

IN WITNESS WHEREOF, the parties hereto have caused the terms of this License to be executed on the day and year first above written.

LICENSOR:
COUNTY OF KAUA'I

By _____
Its Mayor

By _____
Its Director of Finance

By _____
Its County Clerk

LICENSEE:
KAUA'I PHILIPPINE CULTURAL
CENTER

By _____
Its President
Its Chair of the Board

APPROVED:

By _____
Its County Engineer

APPROVED AS TO FORM AND LEGALITY:

By _____
ALFRED B. CASTILLO, JR.
Its County Attorney

State of Hawai'i
County of Kaua'i
Fifth Judicial Circuit

On _____ day of _____, 2012, before me personally appeared BERNARD P. CARVALHO, JR., to me personally known, who, being by me duly sworn, did say that his is the Mayor of the County of Kaua'i, a political subdivision of the State of Hawai'i; and said BERNARD P. CARVALHO, JR. acknowledged said instrument to be the free act and deed of the County of Kaua'i.

Document description: _____ LICENSE
Doc. Date _____ No. pages _____

Signature of Notary Date

Print Name

My commission expires: _____

State of Hawai'i
County of Kaua'i
Fifth Judicial Circuit

On _____ day of _____, 2012, before me personally appeared WALLACE G. REZENTES, JR., to me personally known, who, being by me duly sworn, did say that his is the Director of Finance of the County of Kaua'i, a political subdivision of the State of Hawai'i; that the said instrument was signed on behalf of said County of Kaua'i by authority of its Charter; and said WALLACE G. REZENTES, JR. acknowledged said instrument to be the free act and deed of the County of Kaua'i.

Document description: LICENSE
Doc. Date _____ No. pages _____

Signature of Notary _____ Date _____

Print Name
My commission expires: _____

State of Hawai'i
County of Kaua'i
Fifth Judicial Circuit

On _____ day of _____, 2012, before me personally appeared RICKY WATANABE, to me personally known, who, being by me duly sworn, did say that his is the County Clerk of the County of Kaua'i, a political subdivision of the State of Hawai'i; that the said instrument was signed on behalf of said County of Kaua'i by authority of its Charter; and said RICKY WATANABE acknowledged said instrument to be the free act and deed of the County of Kaua'i.

Document description: LICENSE
Doc. Date _____ No. pages _____

Signature of Notary _____ Date _____

Print Name
My commission expires: _____

State of Hawai'i
County of Kaua'i
Fifth Judicial Circuit

On _____ day of _____, 2012, before me personally appeared _____, to me personally known, who, being by me duly sworn, did say that the person is the President of _____, and that the instrument was signed in behalf of the corporation by authority of its board of directors, and _____ acknowledged the instrument to be the free act and deed of the corporation.

Document description: _____ LICENSE
Doc. Date _____ No. pages _____

Signature of Notary _____ Date _____

Print Name

My commission expires: _____